

DPA 08-2
(Amending LMA No. G-627)

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I. EXECUTIVE SUMMARY

Applicant:	<u>Stabler 1848, LLC</u> (a/k/a Goddard School and Thomas Building)
DPA No. & Date of Filing:	DPA 08-2, filed June 20, 2008, which is actually an SDPA (<i>i.e.</i> , a Schematic Development Plan Amendment) ¹
Zone:	O-M (applying C-T Zone Development Standards, per the existing SDP) and Sandy Spring/Ashton Rural Village Overlay Zone (SSRVO Zone)
Amendment Sought:	The addition of a combined office/school building (no more than 35,000 square feet, and no more than 30 feet [2 ½ stories] tall) and a parking facility, with corresponding modifications to the covenants
Existing Schematic Dev. Plan:	Three Buildings containing 51,077 square feet, approved in LMA G-627, Resolution 11-1397, dated 4/25/1989
Location:	900 Olney Sandy Spring Road (MD 108), Sandy Spring, MD; Part of Subject Site is within Sandy Spring Historic District, but the proposed structures are outside the Historic District
Applicable Master Plan:	1998 Sandy Spring /Ashton Master Plan
Gross Tract Area:	4.84 acres (210,993 square feet)
Density Permitted / Planned:	O-M: 1.5 FAR; SSRVO: 0.75 FAR; C-T: 0.5 FAR / Planned 0.42 FAR
Maximum Building Coverage:	35% maximum in CT Zone / 16.1% (34,008 sq. ft.) planned
Green Space Required / Planned:	10% required (21,099 sq. ft.) / 53% planned (113,000 sq. ft.)
Parking Planned:	294 spaces (68 school and 226 office and commercial)
Building Height Limits / Planned:	O-M: 60 ft; SSRVO: 30 ft.; C-T: 35 ft / 30 ft. planned
Storm Water Drainage:	Concept approved 10/29/08 in SM File #234109; Quantity Control and Quality Control are required. There will be both Site Plan and Subdivision reviews
Neighborhood Response:	Significant neighborhood opposition, including opposition by the Sandy Spring-Ashton Rural Preservation Consortium, based mostly on questions of compatibility of the proposed building and garage
Significant Issue:	Whether this proposed development must be reviewed by the Historic Preservation Commission (HPC) because part of the site, though not the part where construction is scheduled, is within a designated Historic District
Technical Staff Recommends:	Approval
Planning Board Recommends:	Approval, with modifications accepted by Applicant
Hearing Examiner Recommends:	Approval, conditioned upon HPC Review

¹ Although labeled “DPA 08-2,” this case actually involves a Schematic Development Plan Amendment (SDPA), not a Development Plan Amendment (DPA). The distinction is important because Zoning Ordinance §59-D-1.61 specifies findings the Council must make for a DPA case, which do not apply to an SDPA case. DPA cases involve only zones specified in Zoning Ordinance §59-D-1.1, and none of those zones is involved in this case.

II. STATEMENT OF THE CASE

Applicant Stabler 1848, LLC (a/k/a “Goddard School” and “Thomas Building”) filed Development Plan Amendment (DPA) 08-2, on June 20, 2008, seeking to amend the schematic development plan approved by the Council on April 25, 1989 in LMA G-627. That Council Resolution (No. 11-1397) reclassified 4.84 acres (210,993 square feet) of land located at 900 Olney Sandy Spring Road (MD 108), Sandy Spring, Maryland into the O-M Zone and accepted Applicant’s 1989 plan to develop the property by adding a computer center (now called the Moore building) to the two existing buildings. The three existing buildings contain 51,077 square feet of floor area.²

Although the land was reclassified into the O-M Zone, the Council’s resolution (Exhibit 45) provided that the more restrictive development standards specified in the C-T Zone would apply, as agreed to by Applicant. Those C-T Zone development standards will continue to apply under the proposed amendment, as will the standards contained in the Sandy Spring/Ashton Rural Village Overlay Zone (SSRVO Zone). A significant portion of the entire site is within the Sandy Spring Historic District, but neither of the newly proposed structures is within the designated historic area.³

Applicant’s present plan (*i.e.*, DPA 08-2) would add a combined office/school building and a parking facility to the existing three buildings. The new building would contain no more than 35,000 square feet of gross floor area, and would be no more than 30 feet (2 ½ stories) tall.⁴ The Schematic Development Plan Amendment (SDPA – Exhibit 94) would also require corresponding amendments to the binding elements set forth in the covenants which were formerly filed in this case. To accomplish this change, revised covenants have been executed and filed in the record

² The Hearing Examiner takes official notice of the record in the rezoning case, LMA G-627.

³ Technical Staff does not recommend review by the Historic Preservation Commission (HPC) at this stage. It should be noted that a correction was made to page 25 of their report (Exhibit 38) because Technical Staff informed the Hearing Examiner that they had inadvertently left out the crucial word “not” from the sentence regarding whether HPC review was needed (Exhibit 64). They meant to say that review by the HPC is not required.

⁴ These figures differ from those listed in the Technical Staff report (Exhibit 38) because Applicant has accepted the reduced size caps recommended by the Planning Board (Exhibit 42).

(Exhibit 93). If the Council approves this SDPA, the revised covenants will be filed in the land records of Montgomery County, pursuant to the requirements of Zoning Ordinance §59-H-2.54(d).

The application for the SDPA was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), and in a report dated November 3, 2008, Staff recommended approval (Exhibit 38).⁵ The Montgomery County Planning Board (“Planning Board”) considered the application on November 13, 2008 and, by a vote of four to one, also recommended approval, but with a revisions to Applicant’s proposed binding elements, as stated in the Board’s memorandum dated November 14, 2008 (Exhibit 42). The Planning Board recommended limiting the gross floor area of the new building to 35,000 square feet, with a total gross floor area of all buildings not to exceed 86,077 square feet. The Planning Board also recommended limiting the height of the proposed building to no more than 30 feet (2 ½ stories).

Pre-hearing letters in opposition were filed by the community (Exhibits 37, 40, 41, 43 and 44), including opposition by the Sandy Spring-Ashton Rural Preservation Consortium (Exhibit 40), based mostly on questions of compatibility of the proposed building and garage with the neighborhood and with the historic area, but also expressing concern about potential traffic problems.

A public hearing was noticed for November 21, 2008 (Exhibit 39). It began, as scheduled, and resumed on November 24, 2008. In addition to Applicant’s witnesses, Martin Klauber, the People’s Counsel, participated, and six witnesses testified in opposition, including the Sandy Spring-Ashton Rural Preservation Consortium. The record was initially closed on November 24.

After reviewing the record, the Hearing Examiner determined that seven new binding elements and five new “Site Plan Notes” first proposed at the hearing needed to be reviewed by Technical Staff. The Hearing Examiner therefore issued an order on December 12, 2008 (Exhibit

⁵ The Technical Staff Report is quoted and paraphrased frequently herein.

80), reopening the record and scheduling an additional hearing date for January 13, 2009. The Order also asked Technical Staff to indicate whether further review by the Planning Board was called for.

In addition, the Hearing Examiner's review of the Historic Preservation provisions of the Montgomery County Code, Chapter 24A, led him to conclude that the Historic Preservation Commission (HPC) must be given the opportunity to review this matter, in conjunction with Site Plan review and Subdivision. Since Technical Staff had decided that an HPC review was not required (Exhibit 64), the Hearing Examiner informed the parties in his December 12, 2008 Order that he was considering recommending that the Council condition its action with a requirement that this matter be submitted to the HPC in conjunction with Site Plan review and Subdivision.⁶

On January 2 and 5, 2009, Technical Staff filed their responses to the December 12, 2008 Order, recommending minor changes to two of the binding elements proposed by Applicant (Exhibit 84) and adhering to their previous position that review by the HPC was not required (Ex. 86). Staff did not suggest that an additional Planning Board review was needed prior to action by the Council.

The final day of the hearing was held on January 13, 2009, as scheduled.⁷ Applicant agreed to the recommendation of the Technical Staff, and revised the binding elements on its SDPA accordingly (Exhibit 94). During the course of the final day of hearing, the revised covenants were executed and filed in the record (Exhibit 93). Members of the community argued for requiring HPC review, but Applicant opposed making that a binding element or site plan note. Applicant did not object to a condition in the Council resolution requiring submission of the matter to the HPC for it to determine its own jurisdiction in conjunction with site plan review and subdivision. As required by Zoning Ordinance §59-D-1.74(d)(2), the record was closed at the completion of the hearing.

⁶ While conditional rezonings are not permitted, the Hearing Examiner is not aware of any such restriction on schematic development plan amendments.

⁷ The transcripts are identified by the date of hearing and the page number. For example, the citation, "11/21/08 Tr. 17-18," indicates pages 17 to 18 at the November 21, 2008 hearing date.

III. FACTUAL BACKGROUND AND DISCUSSION OF ISSUES

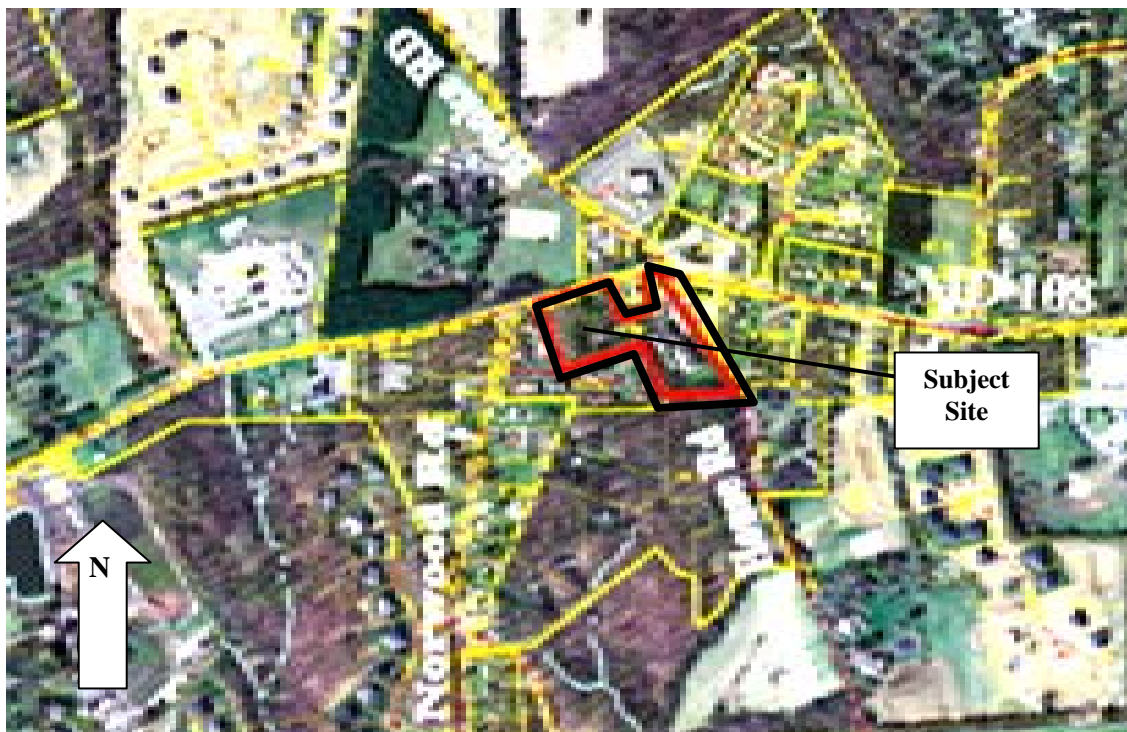
A. Zoning History

Technical Staff provided the following zoning history of the subject site (Exhibit 38, p. 8):

1958 Comprehensive Zoning Amendment	R-R, R-30 and C-2
1970 rezoning F-541	R-30 to C-1 (2.25 ac)
1972 rezoning F-850	R-R to C-T (2.26 ac)
1981 Comprehensive Zoning (G-293)	C-T, C-1 and C-2
1989 Rezoning LMA G-627	C-T, C-1 and C-2 to O-M (4.84 ac) ⁸
1998 Sandy Spring/Ashton Master Plan confirmed the O-M Zone	

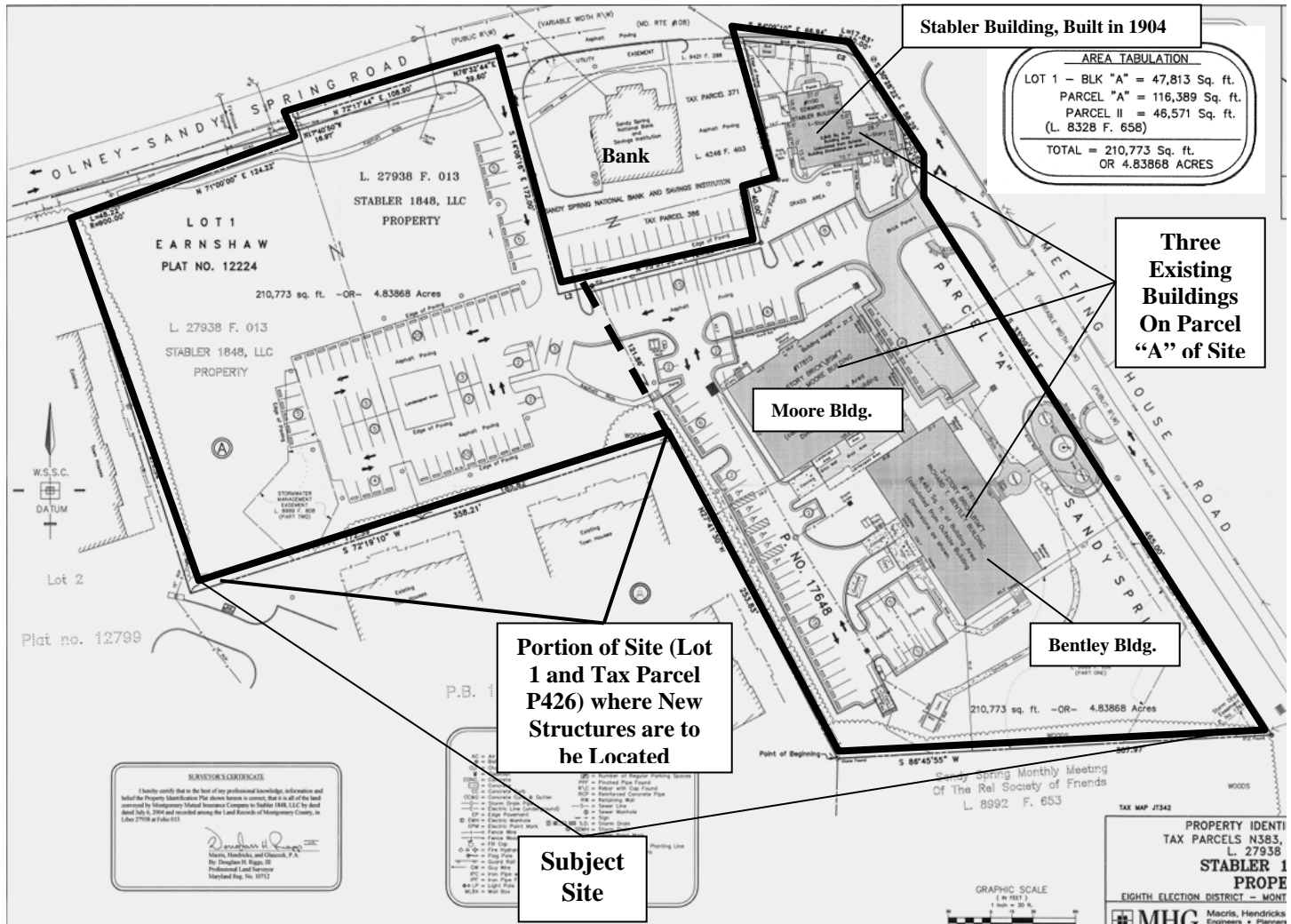
B. Subject Property

The subject site is located in the southwest quadrant of the intersection of Meeting House Road and Olney-Sandy Spring Road (MD Route 108) in Sandy Spring, Maryland. It is comprised of Parcel A, Sandy Spring Subdivision; Lot 1, Block. A, Earshaw Subdivision; and Tax Parcel P426. If one is oriented with north at the top, the site looks like an inverted “L” shape, with a notch missing from the northern (top) portion, as shown on the following aerial photo (Ex. 38, p. 4):



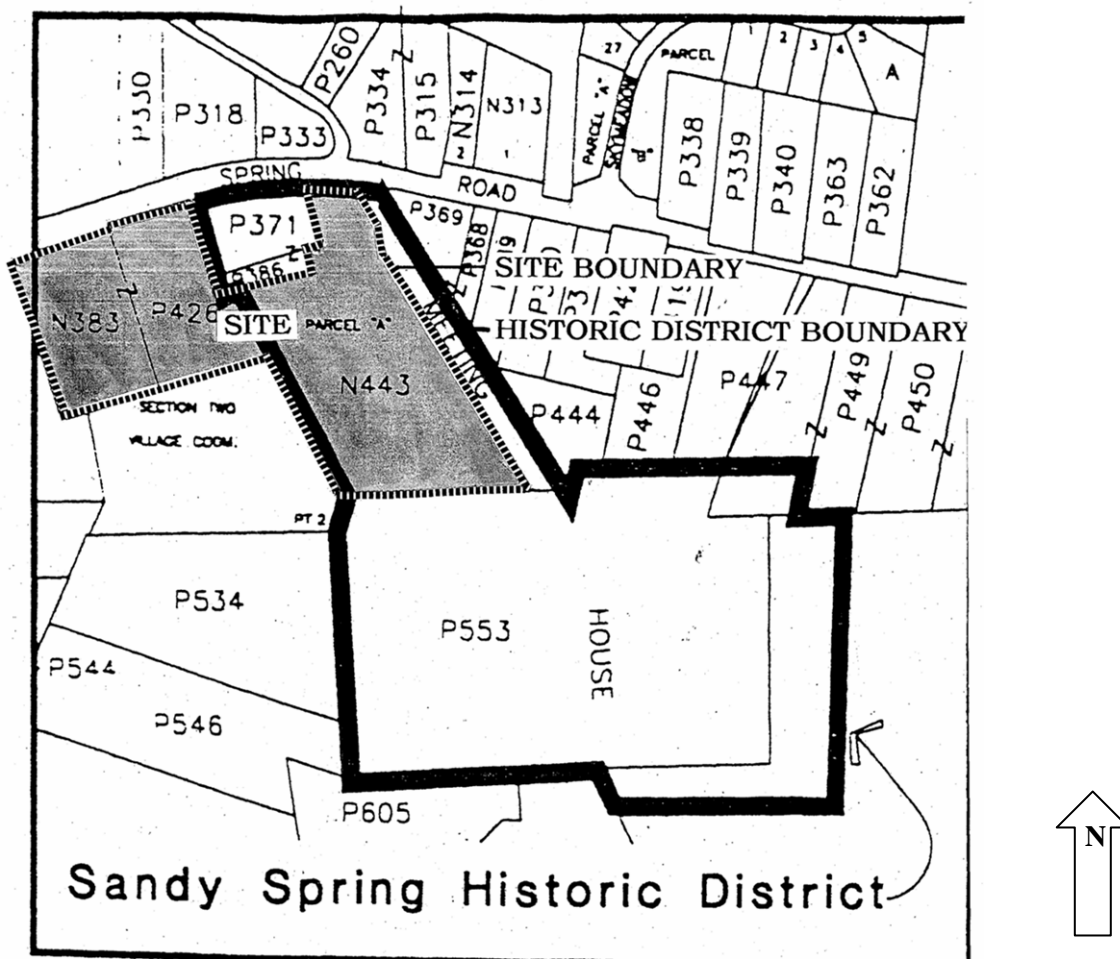
⁸ As noted in the previous section, the subject site was rezoned to O-M, but the development standards of the C-T Zone were applied and incorporated into covenanted binding elements.

The notch is occupied by Tax Parcels 386 and 371, where the Sandy Spring National Bank is located. The bank (which is off site) and the three buildings which exist on the Parcel “A” portion of the site, are shown on the following Property Identification Plat (Exhibit 6):



The dashed line separates the two portions of the site, with Parcel “A” to the east and Lot 1 and Tax Parcel P426 to the west. According to Applicant’s Land Planning Report (Exhibit 36(c), p. 1), the gross tract area of the subject site is 210,993 square feet, or approximately 4.84 acres. Technical Staff reports (Exhibit 38, pp. 7-8) that the site has 410 ft of frontage along MD 108

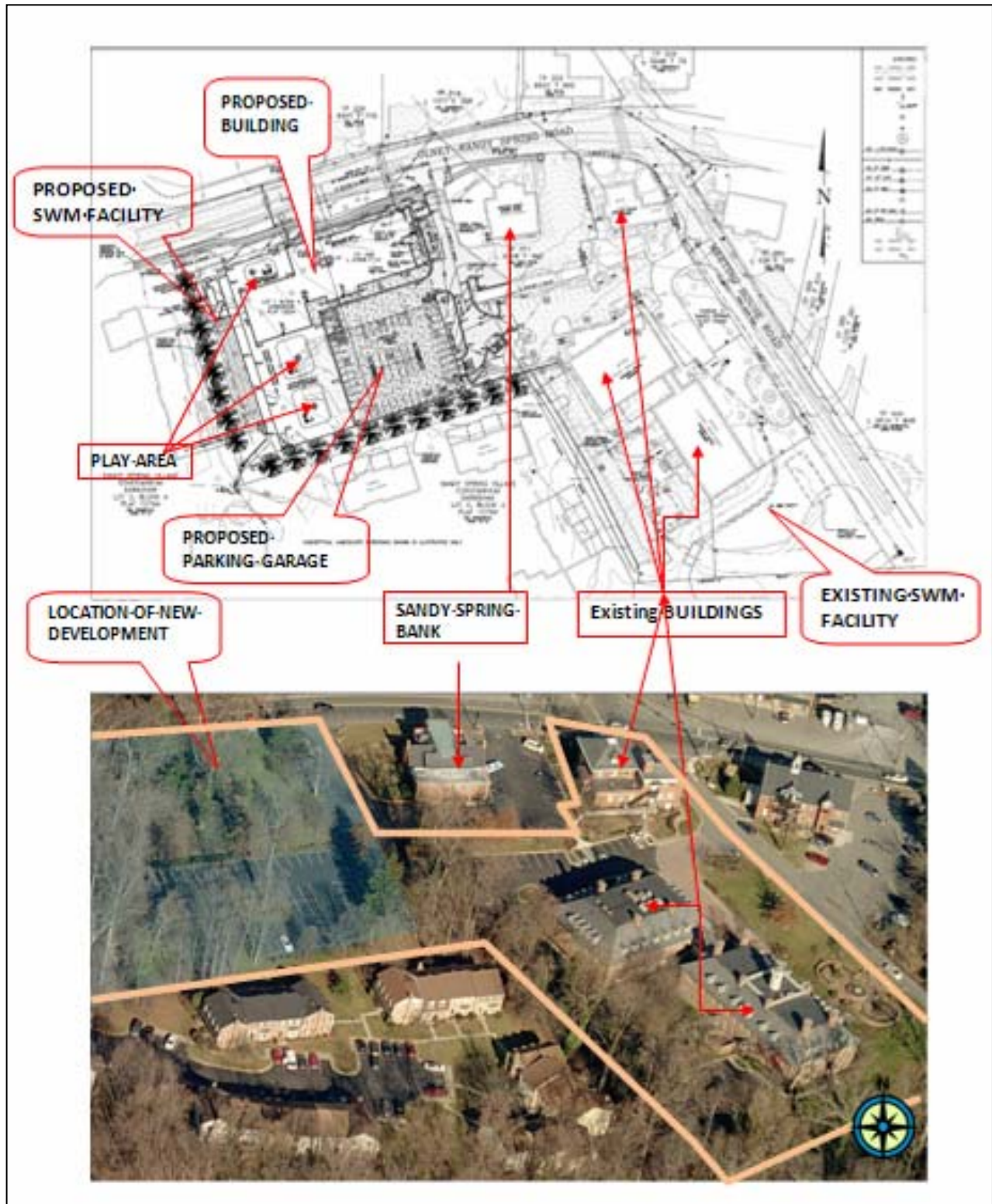
(north) and 370 feet of frontage along Meeting House Road (on the east).⁹ A significant portion of the entire site (*i.e.*, all of Parcel “A”) is within the Sandy Spring Historic District, but neither of the newly proposed structures is within the designated historic area since the historic area does not extend onto the western portion of the site (Lot 1 and Tax Parcel P426).¹⁰ The Historic area and the site boundaries are shown below on a rendered blowup (Exhibit 62) of the insert map on page 76 of the 1998 Sandy Spring/Ashton Master Plan. The grey area designates the subject site, and the thick dark line designates the boundary of the historic district.



⁹ Applicant's land planner differs slightly in these measurements, breaking the frontage down by lot and parcel: According to the Land Planning Report (Exhibit 36(c), p. 1), Lot 1 and Tax Parcel P426 have 320 feet of frontage along MD 108, and Parcel A includes 80 feet of frontage along MD 108 [which would add up to a total frontage along MD 108 of 400 feet] and 370 feet of frontage along Meeting House Road. The differences are not material to this proceeding.

¹⁰ A tiny sliver of the Sandy Spring Bank's parking lot, which is within the historic district, may be disturbed by the construction, but it will not be materially changed.

A good perspective of the subject site is provided by the combined diagram and aerial photo from page 11 of the Technical Staff report (Exhibit 38):



The subject site is classified in the O-M Zone (moderate-intensity office use) and in the Sandy Spring-Ashton Rural Village Overlay Zone. Applicant's Land Planning Report (Exhibit 36(c), pp. 1-2) describes the subject site as follows:

The Property is gently sloping, dropping approximately 16 feet in elevation from MD 108 to the south Property line on the east side of the Property, and dropping approximately 10 feet in elevation along the western side of the Property. There is an existing forest stand along the western Property line of approximately 0.75 acres. A drainage outfall into an intermittent stream is located on the southeast portion of the Property.

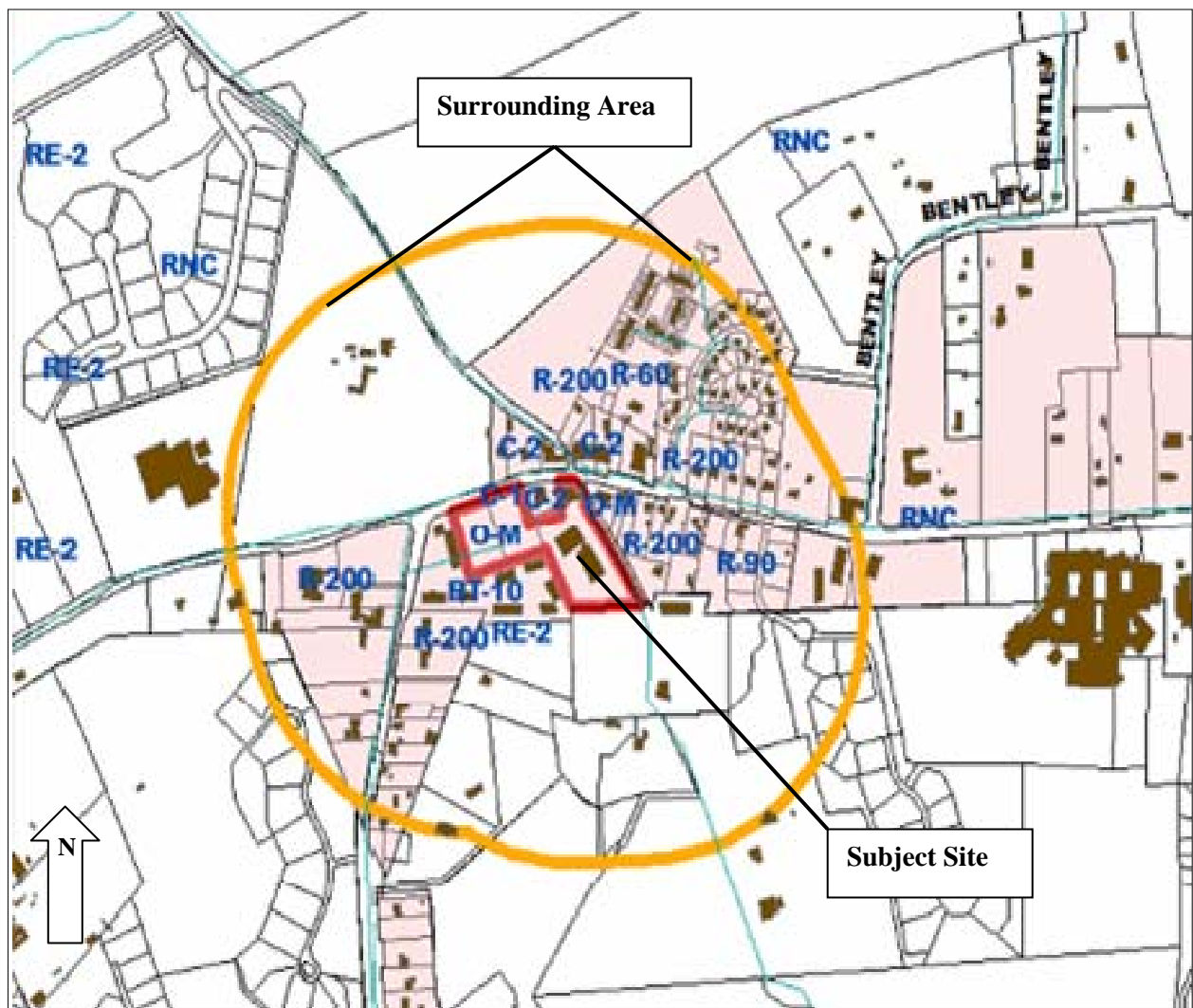
Parcel A, comprising the eastern portion of the Property, is developed with two interconnected three-story buildings facing Meeting House Road, and a two and one-half story building facing MD 108. Together, these buildings comprise a total of 51,077 square feet of gross floor area. A surface parking lot surrounds the west (rear) and north side of these buildings providing 86 spaces, with additional parking provided on the western portion of the Property. Access is provided directly from MD 108 and Meeting House Road, and the parking is interconnected to the adjacent Sandy Spring Bank property fronting on MD 108. A stormwater management facility is located at the southern end of Parcel A. Lot 1 and TP P426 are improved with a surface parking facility providing approximately 66 spaces. A driveway providing access directly to MD 108 is shared with the adjacent Sandy Spring Bank and interconnects to the parking on Parcel A.

Thus, Parcel "A" (the eastern side of the site) is already developed with three buildings (the Stabler, Moore and Bentley Buildings), while Lot 1 and Tax Parcel P 426 (the western side of the site) are generally unimproved, containing a small forested area and a parking lot.

C. Surrounding Area and Adjacent Development

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, Technical Staff recommends designating the surrounding area in the same manner as was accepted by the Council in the 1989 rezoning of the subject property to the O-M

zone (G-627). In that case, the surrounding area was defined in Resolution 11-1397 (Exhibit 45) as those uses within a 1,000 foot radius of the subject site. Applicant's land planner, Phil Perrine, agreed with this definition (11/21/08 Tr. 149-150), and the Hearing Examiner finds no evidence justifying a change in the surrounding area definition already accepted by the Council for this site. That area is shown below on a zoning map provided by Technical Staff (Exhibit 38, p. 9):



Technical Staff reports (Exhibit 38, pp. 8-9) that the land use within the surrounding area is characterized by limited commercial uses (retail and service) and moderate to low-density residential uses surrounding the commercial enclave, which is located mostly between Norwood Road and

Meeting House Road, along MD 108. The subject property and the adjacent properties are also within the Sandy Spring/Ashton Rural Village Overlay Zone. The eastern portion of the subject property and adjacent property to the southeast are located within the Sandy Spring Historic District, as shown in the map on page 9 of this report.

Nearby uses and zones include:

- North:** Sandy Spring Bank and across MD-108, retail and service uses in the C-2 Zone.
- East:** Across Meeting House Road, a three story brick vacant building that formerly housed the Sandy Spring Volunteer Fire Station in the O-M zone and two single-family dwellings in the R-200 zone.
- South:** The Sandy Spring Friends Meeting House (built 1817), and several large undeveloped parcels of land in the RE-2 zone.
- West/Southwest:** The Sandy Spring Village condominium and townhouse development in the RT-10 zone.

More detail, including a description of the architectural features of nearby structures, is contained in Applicant's Land Planning Report (Exhibit 36(c), pp. 3-4):

The uses within the surrounding area include retail and service commercial uses along both sides of MD 108 at the intersection of Brooke Road-Meeting House Road. Single-family residences are located to the east beyond the commercial area, and residential townhouses are located to the south and west along the south side of MD 108. The Sandy Spring Volunteer Fire Station is located north of Brooke Road approximately 200 feet from MD 108. The Friends Meeting House is located approximately 900 feet south of MD 108 along Meeting House Road.

The immediate area is largely commercial in character with commercial uses dominating both sides of MD 108. Approximately 3½ acres of C-2, general commercial zoned land, is located north of MD 108 and approximately ½ acre of C-2 zoned land, to accommodate the Sandy Spring Bank, is located south of MD 108. In addition, approximately 5½ acres of O-M zoned land is located on the south side of MD 108, including the subject property. The Sandy Spring Historic District is located within the surrounding area and includes Parcel A, the Sandy Spring Bank, Friends Meeting House, and Meeting House Road.

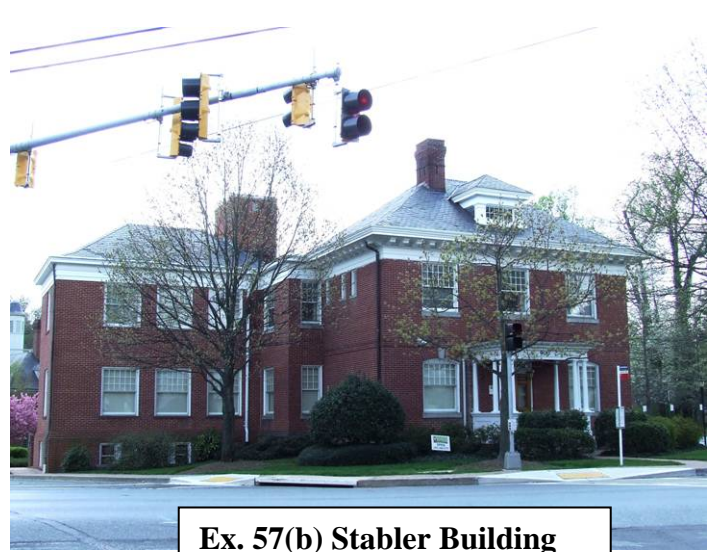
The three commercial structures across MD 108 from the Property are two-story brick buildings with flat roofs. At the west end are two, two-story residential structures with gable roofs providing space for commercial uses.

On the south side of MD 108, the building at the southwest quadrant at Meeting House Road, the Stabler Building, is a two and one-half story brick structure with a hip-roof and dormers. The adjacent Sandy Spring Bank is located in a one-story brick building with a steep-gabled roof and a one and one-half story pediment and column-framed entrance. To the east is a three-story brick building, previously housing the Sandy Spring Volunteer Fire Station, with dormer windows serving the third floor. To the south on Parcel A are two, three-story brick, Colonial Williamsburg buildings with dormers serving the third floor.

Photographs of the nearby buildings were provided by Applicant (Exhibits 57 (a) – (h)), and they give a sense of the area surrounding the subject site:



Ex. 57(a) Sandy Spring Bank



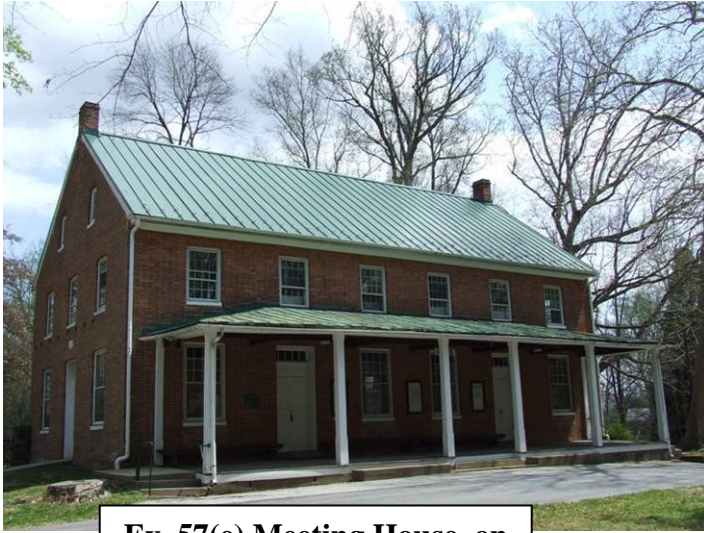
Ex. 57(b) Stabler Building



Ex. 57(d) Bentley Building



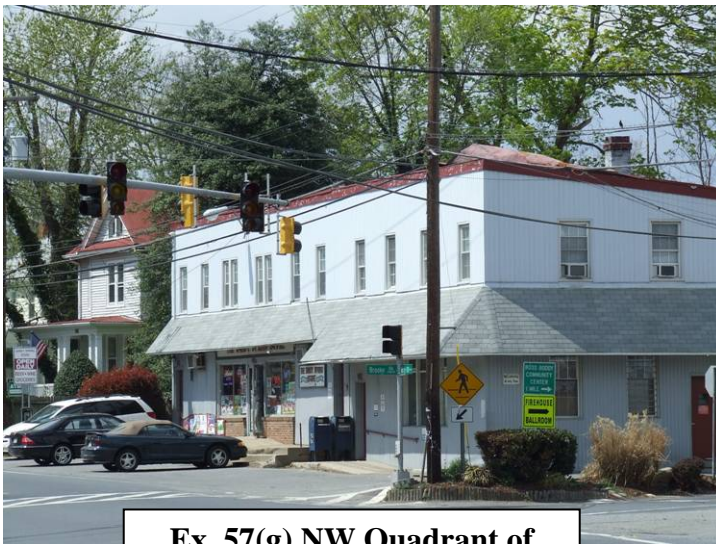
**Ex. 57(c) Old Fire House Building,
Located in the SE Quadrant of MD
108 and Meetinghouse Road**



**Ex. 57(e) Meeting House, on
Meeting House Road**



**Ex. 57(f) Meeting House
Road, Toward MD 108**



**Ex. 57(g) NW Quadrant of
MD 108/Brooke Road**



**Ex. 57(h) NE Quadrant of
MD 108/Brooke Road**

D. Proposed Development

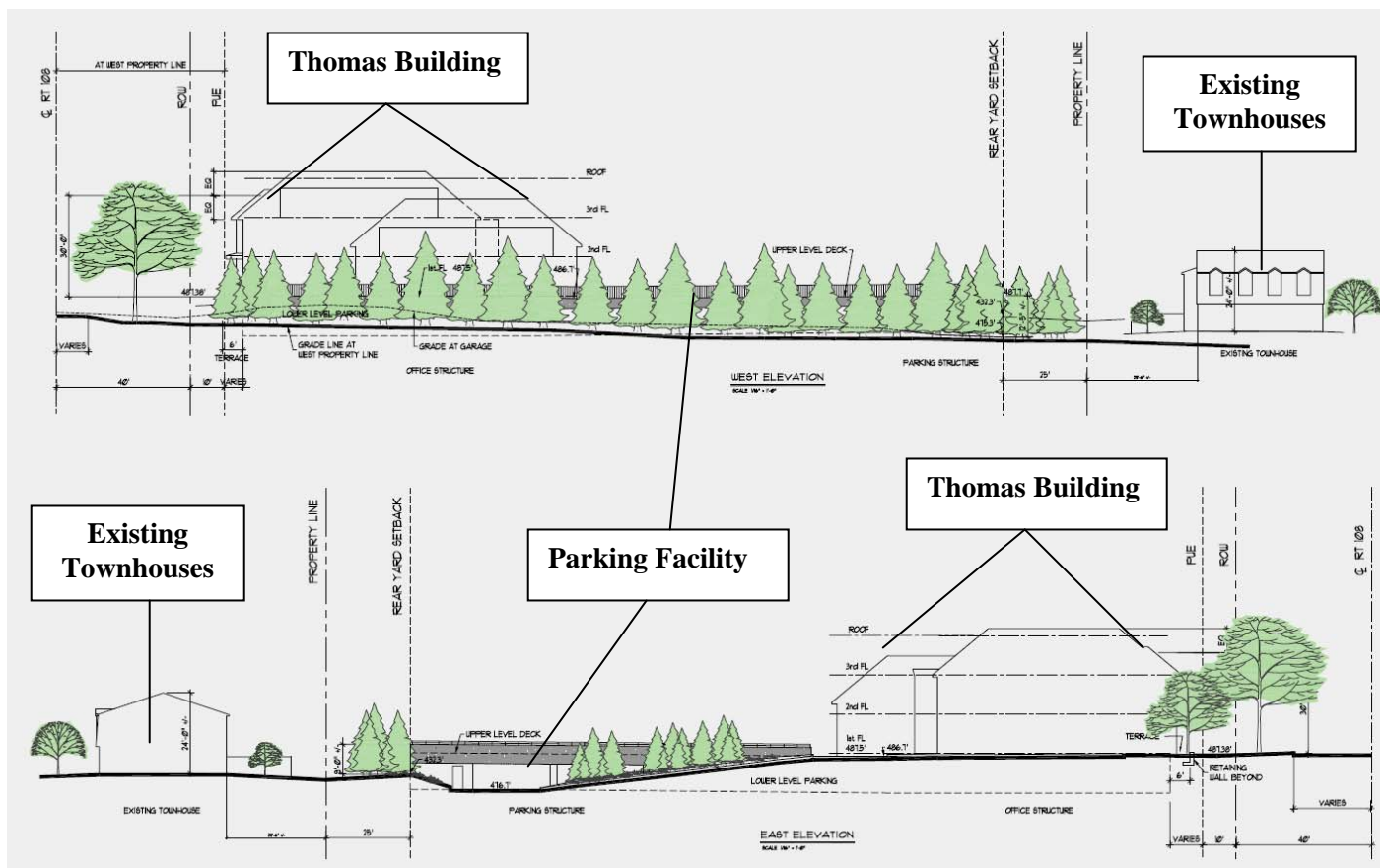
1. Development Concept

Applicant's initial plan in LMA G-627 called for only a parking lot and three buildings located on the eastern half of the site – the Stabler, Moore and Bentley Buildings, which are shown in exhibits reproduced on pages 8 and 10 of this report. The new proposal, DPA 08-2, would add the Thomas Building and a parking facility on the western side of the subject site, in the locations depicted on page

10 of this report. The dimensions of the Thomas Building and the applicable development standards would be restricted by binding elements which will be discussed in the next section of this report.

Applicant's vision is that the proposed building will be similar in scale to the other buildings along the west side of Meeting House Road, and will be compatible with the neighborhood; architectural details to be worked out at site plan review. Applicant argues that the new building will help "create a 'main street' character and assist in the revitalization of Sandy Spring village center by providing more office space within the village center." Exhibit 36(c), p. 12.

A private pre-school for up to 196 children, the Goddard School, will be located on the first floor of the Thomas Building, with commercial office space, unassociated with the School, provided on the second and third floors. The first floor may also include a small commercial use, such as a coffee shop, deli, or office occupying up to 1,684 square feet. Ex. 36(c), p. 4. Shown below is Applicant's concept of the way the east and west elevations will look when the project is completed (Ex. 60):



Proposed school operations were described by Alec Yeo (11/21/08 Tr. 32-52), the franchise operator of the Goddard School of Eldersburg, who has been looking for a location in Sandy Spring to open a Goddard School since 2005. There are 300 such franchises in the country.

As described by Mr. Yeo, Goddard School takes children as young as six weeks, and goes up to kindergarten, but the proposed Goddard School location here would not have a kindergarten. The difference between the Goddard School and ordinary day care is that Goddard has staff that meet not only the requirements for childcare, but also are licensed by the Maryland State Department of Education, with four-year degree teachers teaching the children.

The classrooms themselves are very strictly regulated by the State of Maryland with regard to floor space required for each child, so the school will have 13 rooms, each of which is designated with a certain square footage. The required size of outside playgrounds is also set by the State of Maryland. These will be high-end playgrounds with a poured rubber surface. In addition, the school will have administrative offices, a staff resource room and bathrooms for the facility.

A maximum of 196 children would be on site on any specific day. A good number of families bring two children to the facility at the same time. The drop off and pick up procedures require that parents park their cars and bring their children into the building. There will be no central place to drop children off. Parents must go in to the classroom and present the child to the teacher, let the teacher know, and the teacher accepts the child into the teacher's care. It usually takes between about five and eight minutes, and then the parents are back out again. The same thing happens in the afternoon, but the afternoon pickup is spread out over a longer period of time, depending on work schedules and other factors. Thus, the big pressure in terms of parking spaces would be the morning.

The school also has a half-day program that runs from anytime parents wish to drop off children, typically prior to 9:00 a.m. through 1:00 p.m. That program that would get a large percentage of the school's educational activity.

For safety sake, the school must be located all on one floor, the ground floor. It is also difficult operationally to run a center on two levels. The facility will open from 7:00 a.m. to 6:00 p.m., but three staff members will arrive about 6:45 a.m. to turn on the lights in the building, make sure that there are no problems and open the facility. Staff will increase in half-hour increments based on the attendance and arrival of the children. It usually goes up to about full staff around ten, and then changes during lunch time. There are no scheduled evening activities. There occasionally may be PTA-type meetings, but they are not scheduled activities. There are about four of those per year. There are no holiday programs that go on at night and no weekend activities.

According to Mr. Yeo, the school would have several different programs that involve community interest and bringing speakers and people in. The school would welcome and encourage a partnership with any of the local organizations to come in, speak to the children and assist with an appropriate curriculum.

As to how the school would interact with those using the office space above, Mr. Yeo testified that the school would have an electronically secured entrance that is isolatable for just the children and families. People going to businesses upstairs will not have access in any way to the school facility. Also, the school's parking for drop-off and pickup is immediately adjacent to the school's entrance on ground level, in the rear. Thus, the distance to the building itself will not endanger the safety of the children. The staff would be parking in the more distant, less desirable spaces, as their vehicles would stay during the day. Parking spaces would be designated on site.

Design concepts for the proposed structures may be significantly modified at site plan review, but the binding elements, discussed below, will remain. Whether the schematic development plan amendment is compatible with surrounding development and consistent with the applicable Master Plan will be discussed in Part III. E.. of this report.

2. Schematic Development Plan Amendment & Binding Elements

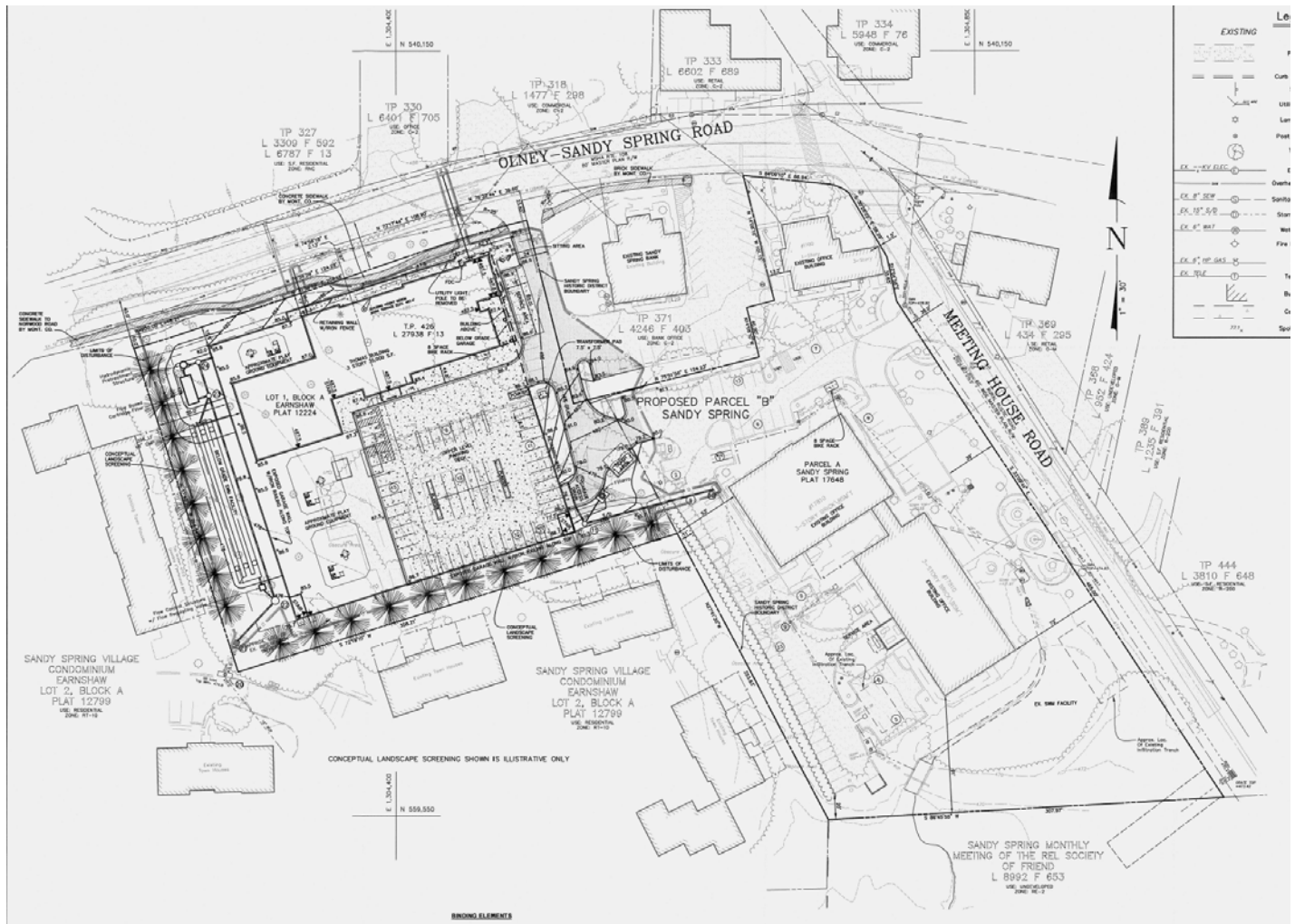
The Applicant in this case obtained a rezoning of the subject site in LMA G-627 on April 25, 1989, through the “optional method” of development, pursuant to Zoning Ordinance § 59-H-2.52. In accordance with that rezoning method, the Council approved, in Resolution 11-1397, not only the zoning reclassification to the O-M Zone, but also a schematic development plan (SDP) and certain binding elements which were filed as covenants in the County land records. The original binding elements were (Exhibit 13, p.2):

- A. The number of buildings proposed at this time shall not exceed 3.
- B. The height of buildings shall not exceed thirty-five (35) feet.
- C. The amount of square footage of buildings shall not exceed 52,100 square feet.
- D. Development of the subject property will be in accordance with, and will not exceed, the standards of the C-T zone, as they existed as of the date of final approval of Zoning Application No. G-627.

The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified in the covenants. Thus, the optional method allows an applicant to specify elements of its proposal that the community, reviewing agencies and the District Council can rely on as legally binding commitments. Illustrative elements of the SDP or the SDPA may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a schematic development plan amendment.

Now the Applicant seeks to modify the use of the site, as previously described. To do so, it must obtain approval of an amended SDP (SDPA), and revised binding elements, which will also be

filed in the County land records following approval of the SDPA. The standards under which the SDPA and its binding elements will be reviewed are the same as those applied to the review of the original SDP, and they will be discussed in Part V of this report. The site layout from the revised SDPA (Exhibit 94) is reproduced below, and text is shown on the following pages:



SITE DATA

SUBJECT PROPERTY:	LOT 1, BLOCK A, EARNSHAW, PLAT 12224 PARCEL A SANDY SPRING, PLAT 17648 TAX PARCEL 426, LIBER 27938, FOLIO 13
LOT AREA:	210,993 S.F. OR 4.84 AC.
ZONING CLASSIFICATION:	O-M (DEVELOPMENT MUST CONFORM TO THE C-T ZONE) (1) SANDY SPRING, ASHTON RURAL VILLAGE OVERLY ZONE
PROPERTY ADDRESS:	SANDY SPRING ROAD
TAX ACCOUNT No.:	1869728 LOT 1 2860303 PARCEL A 1526737 P-426
PROPOSED USE:	OFFICE, COMMERCIAL AND SCHOOL

DEVELOPMENT STANDARDS

	<u>REQUIRED</u>	<u>PROPOSED</u>
TRACT AREA	No Minimum	210,993 S.F. 4.84 AC.
BUILDING SETBACK REQUIREMENTS		
ADJACENT TO SANDY SPRING RD.	10' (Min)	17' (Bdg. 15.5' (Gar.)
ADJACENT TO MEETING HOUSE RD.	10' (Min)	1.5' (2)
ADJACENT TO RT-10 ZONE	15' (Min)	64' (Bdg.) 55.0' (Gar.)
ADJACENT TO RE-2 ZONE	15' (Min)	91' (2)
BUILDING HEIGHT	30' (Max) (1)	30'
BUILDING COVERAGE		
EXISTING OFFICE BUILDINGS		19,204 S.F. (3)
PROPOSED OFFICE/SCHOOL BUILDING		14,804 S.F. (4)
TOTAL	35% or 73,847 S.F. (Max)	16.1% or 34,008 S.F. 34.0% Inc. Parking Str.
BUILDING AREA	0.5 FAR or 105,496 S.F. (Max.)	
EXISTING OFFICE		51,077 S.F. (3)
PROPOSED OFFICE		21,044 S.F. (4)
PROPOSED COMMERCIAL		1,718 S.F. (4)
PROPOSED DAYCARE/SCHOOL		12,238 S.F. (4)
TOTAL	105,496 S.F.	86,077 S.F.
PARKING SETBACK REQUIREMENTS		
ADJACENT TO SANDY SPRING RD.	10' (Min)	100'
ADJACENT TO MEETING HOUSE RD.	10' (Min)	39'
ADJACENT TO RT-10 ZONE	20' (Min)	11' (2)
ADJACENT TO RE-2 ZONE	17' (Min)	20'
SITE GREEN AREA	10% OR 21,099 S.F. (Min)	53% OR 113,000 S.F.
OFF STREET PARKING AND LOADING		
SURFACE PARKING FACILITY AREA		26,700 S.F.
INTERNAL LANDSCAPING	5.0% OR 1,340 S.F. (Min)	6.6% OR 1,760 S.F.
PARKING SPACES		
OFFICE (72,121 S.F.)	3/1K = 217	
COMMERCIAL (1,718 S.F.)	5/1K = 9	
SCHOOL (196 students)	63	
TOTAL	289 SPACES (Min)	294 (5)
HANDICAPP PARKING	7	12 (6)
MOTORCYCLE (59-E-2.3(d))	2% OR 6	6
BICYCLE (59-E-2.3(a))	1/20 SPACES (20 Max)	15

NOTES:

- BINDING ELEMENT OF THE APPROVED G-627 ZONING APPLICATION AND SSP RURAL VILLAGE OVERLAY ZONE
- EXISTING CONDITION
- INFORMATION FROM PREVIOUSLY APPROVED SITE PLAN #8-88060
- INFORMATION PROVIDED BY PROJECT ARCHITECT

5. LOCATION OF SPACES:	AUTO	MOTORCYCLE	HANDICAPP
SURFACE SPACES	78	3	8
UPPER LEVEL	52	3	4
LOWER LEVEL	164	0	0
TOTAL	294	6	

- H/C SPACES INCLUDED IN TOTAL PROVIDED PARKING

The revised binding elements proposed by Applicant are:

BINDING ELEMENTS

1. The number of buildings proposed at this time shall not exceed four (4).
2. The height of the Thomas building shall not exceed thirty (30) feet or 2 1/2 stories.
3. The gross floor area of all buildings shall not exceed 86,077 square feet and the gross floor area of the Thomas building shall not exceed 35,000 square feet.
4. Development of the subject property will be in accordance with and will not exceed the existing 2008 C-T Zone development standards.¹¹
5. The total length of the Thomas building shall not exceed 225 feet.
6. The Thomas building shall be constructed in a minimum of two contiguous sections, with a minimum setback offset between these sections of 25 feet and with no section exceeding 165 feet in length.
7. The main entrance to the Thomas building shall be in the northeast corner of the building.
8. The northern setback from Route 108 of the primary section of the Thomas building shall be a minimum of 15 feet and a maximum of 20 feet.
9. The western setback of the Thomas building shall be a minimum of 64 feet and the eastern setback shall be a minimum of 30 feet to the adjacent Sandy Spring Bank property line.
10. The maximum number of parking spaces on the top deck of the parking structure shall be 55 on that area of the property proposed for the parking structure.
11. The proposed parking structure shall be setback a minimum of 25 feet from the southern property line and a minimum of 50 feet from the western property line.

These self-imposed limitations were designed to keep the structures' scale and size compatible with other properties in the immediate area. The first four binding elements were approved by Technical Staff, modified by the Planning Board, and agreed to by the Applicant. Binding elements numbered 5 through 11 were added at the hearing, after consultation with community members and the People's Counsel. They were then reviewed by Technical Staff, which suggested minor modifications (Exhibit 84) that have been incorporated by the Applicant and

¹¹ The existing 2008 C-T Zone development standards do not differ from those in effect in 1989, as shown in Exhibits 72 and 73.

accepted by all parties. 1/13/09 Tr. 7-8. Staff did not suggest that an additional Planning Board review was needed prior to action by the Council.

Additionally, five “Site Plan Notes” were added by the Applicant to indicate Applicant’s willingness to address design elements of the proposed building and parking facility so as to alleviate concerns of the community. Technical Staff recommended no changes in these five notes (Exhibit 84). The Site Plan Notes are:

SITE PLAN NOTES

1. The Thomas building shall include dormers on the top floor.
2. The facades of the Thomas building shall be primarily cultured stone and/or brick.
3. The facades of the Thomas parking structure shall be primarily cultured stone and/or brick.
4. At Site Plan, the applicant shall determine the number of spaces to be delineated exclusively for the school drop off, specify the effective hours and the method to enforce said drop off parking.
5. Final massing of the Thomas building to be determined at Site Plan.

These are not “binding elements” because they may be modified by the Planning Board at Site Plan. This flexibility will permit the Planning Board to approve the best architectural design and parking facility design to accommodate the area.

The Hearing Examiner finds that the proposed Binding Elements and Site Plan Notes will achieve the desired end of keeping the building scale and parking facility size compatible with other properties in the immediate area. The Planning Board will have the flexibility at Site Plan to reduce the size of the proposed structures if necessary to achieve compatibility. A final executed copy of the Declaration of Covenants containing the Binding Elements has been filed in the record as Exhibit 93. Issues relating to compatibility with the adjacent historic area and adjacent townhouses will be discussed in Part III. E. below, in connection with the Master Plan and community concerns.

3. Public Facilities (Water & Sewer Service, School Capacity, Traffic and Parking)

Zoning Ordinance §59-H-2.4(f), as amended by Zoning Text Amendment 07-17,¹² requires Applicant to produce “[s]ufficient information to demonstrate a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted.” In this case, the application was submitted on June 20, 2008, so the Growth Policy adopted in November of 2007 will apply to this review and at subdivision.

The County’s Growth Policy and the Adequate Public Facilities Ordinance (APFO) require a review of the availability of adequate public facilities for any proposed development. The Growth Policy provides that “The Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated.” Growth Policy, Resolution 16-376 (adopted 11/13/07), pp. 22-23. There is no evidence of a local area problem in this regard, and the site is located across MD 108 from the Sandy Spring Volunteer fire station (Applicant’s Land Planning Report (Exhibit 36(c), p. 14). Water and sewer service, schools and transportation are discussed individually below.

a. Water and Sewer Service

Applicant’s civil engineer, Jim Hendricks, testified that there are adequate electric, telephone, water and sewer utilities in the area to support this development proposal. 11/21/08 Tr. 127. The Technical Staff Report supports this view, indicating that the subject property is served by water and sewer public utilities, and that, according to the Washington Suburban Sanitary Commission, the changes proposed by this application “will not significantly impact the water or sewer systems” (Exhibit 38, p.20).

¹² Ordinance No: 16-14, effective March 17, 2008.

b. School Capacity

School capacity is not an issue in this case since no residential buildings are proposed.

c. Traffic and Parking

Technical Staff describes transportation access to the site as follows (Exhibit 38, p.20):

Access to the property will be from both MD 108 and Meeting House Road via full-movement driveways. These driveways interconnect within the property. Within the study area, both MD 108 and Meeting House Road are two-lane roadways. Montgomery County Department of Transportation (DOT) is currently constructing sidewalks along the south side of MD 108 to the east of Norwood Road (approximately 4,000 feet) and along the east side of Norwood Road to the south of MD 108 (approximately 350 feet). Once completed, this project will provide a continuous sidewalk along the south side of MD 108 between Norwood Road and MD 650, and will connect the Sandy Spring and Ashton Village Centers. Metrobus Route Z2 services the area and runs along MD 108.

Traffic

Craig Hedberg, an expert in transportation planning and traffic engineering, performed a traffic analysis and testified regarding transportation issues (11/24/08 Tr. 17-43). This analysis covers two general areas, Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR).

The proposed development will produce 213 peak hour trips in the a.m. peak hour. However, of that 213 only 96 are new trips that would be generated specifically for the purpose of either coming to the office or coming to the school. Some of the trips are pass-by trips, which just turn in, drop the child off and then proceed on to their destination. Others are diverted trips, in which drivers modify their travel paths, drop a child off, and come out heading to their end destinations.

The proposed development will produce 197 peak hour trips in the p.m. peak hour. However, of that 197 only 98¹³ are new trips that would be generated specifically for the purpose of either coming to the office or coming to the school. Because of the reduction in the proposed office density

¹³ The Hearing Examiner notes that it appears that Mr. Hedberg misspoke at the hearing, because his supplemental report (Exhibit 36(g), pp. 2 & 6) shows 98 primary p.m. peak hour trips, not the 88 to which he testified.

following the initial Planning Board review, the primary trips, which are the main ones that impact the external intersections, were reduced by about 10 trips in the a.m. and the p.m. peak hours.

These findings are summarized in Table 1 from the Technical Staff report (Exhibit 38, p. 22):

TABLE 1
SUMMARY OF SITE TRIP GENERATION
DPA 08-2; PROPOSED THOMAS BUILDING DEVELOPMENT, SANDY SPRING

Proposed Density	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
28,599 SF GFA Office	36	5	41	10	51	61
12,238 SF GFA Goddard School (196 students)	92	80	172	63	73	136
“New” or “Primary” Trips – (32% AM/27% PM)	29	26	55	17	20	37
“Pass-by”/“Diverted” Trips – (68% AM/73% PM)	63	54	117	46	53	99
Total “New” or “Primary” Trips	65	31	96	27	71	98
Total “Pass-by”/“Diverted” Trips	63	54	117	46	53	99
Total Site Trips (40,837 SF GFA)	128	85	213	73	124	197

Source: Integrated Transportation Solutions, Inc., Thomas Building – LATR and PAMR Study, September 2008; Supplemental Transportation Analysis, October 17, 2008.

Technical Staff required Mr. Hedberg to study the impacts of these additional trips on three external intersections -- Maryland 108 at Norwood Road; Maryland 108 at Brooke Road-Meeting House Road; and Maryland 108 at New Hampshire Avenue (MD 650). He took traffic data at those locations, where data was not current, and completed his traffic study in September of 2008 (Exhibit 36(f)). He supplemented that study on October 17, 2008 (Exhibit 36(g)), after the maximum proposed density of the Thomas Building was reduced from 40,000 square feet to 35,000 square feet. Mr. Hedberg testified that the reduced density resulted in a lower level of projected site traffic.

The intersections that were analyzed fall within two different policy areas. The Maryland 108-Norwood Road intersection and the Maryland 108-Brooke Road-Meeting House Road intersection fall within the Olney Policy Area standard, and the intersections to the east, including Maryland 650-Maryland 108 fall within the Rural Patuxent Policy Area. The difference is that the acceptable congestion standard for the Olney Policy Area is a critical lane volume (CLV) of 1450, whereas in the Rural Patuxent Policy Area it is 1350.

Mr. Hedberg found that, under existing conditions, all intersections operated within their respective applicable policy area standard for LATR. However, under the background conditions (*i.e.*, when other developments in the pipeline are factored in), the intersection of Maryland 108 and Maryland 650 does exceed the congestion standard for the Patuxent Rural Policy Area. Therefore, improvements were identified in the study for that location. These improvements will likely be funded in connection with the proposed developments already in the pipeline, and they have been worked out with the State Highway Administration by those developers. Applicant may be required to participate in funding these improvements, but in any event, these improvements would have to take place in order for the subject project to go forward.

According to Mr. Hedberg, these improvements will reduce the CLV at the one intersection projected to fail (after pipeline developments are completed) to the point where it will be within the 1350 CLV standard. It will also be low enough that the projected traffic from the subject application will not drive it over the 1350 CLV standard. His supplemental memorandum (Exhibit 36(g)), shows that the intersection, under the background condition in the p.m., operates at 1382 CLV. After the improvements, the combined effect of the pipeline developments plus the subject site development (*i.e.*, total traffic conditions), will yield an AM peak-hour, critical lane volume of 1140 CLV and a PM peak-hour, critical lane volume of 1226 CLV, which are both well below the

adopted congestion standard. Mr. Hedberg therefore concluded that the development would satisfy LATR.

These results are summarized in Table 2 from the Technical Staff report (Exhibit 38, p. 23):

TABLE 2
SUMMARY OF INTERSECTION CAPACITY CALCULATIONS
DPA 08-2; PROPOSED THOMAS BUILDING DEVELOPMENT, SANDY SPRING

Intersection	Traffic Conditions							
			I				Total w/ Improvements	
	AM	PM	AM	PM	AM	PM	AM	PM
MD 108/MD 650 ¹	1,101	1,244	1,167	1,361	1,195	<u>1,382</u>	1,140	1,226
MD 108/Meeting House Rd/Brooke Rd ²	1,222	1,105	1,286	1,189	1,380	1,298	--	--
MD 108/Site Drwy ²	1,128	1,052	1,152	1,114	1,119	1,110	--	--
MD 108/Norwood Rd ²	1,243	1,129	1,287	1,214	1,341	1,284	--	--
Meeting House Road/Site Drwy ¹	18	27	28	41	160	187	--	--

Source: Integrated Transportation Solutions, Inc., Thomas Building – LATR and PAMR Study, September 2008; Supplemental Transportation Analysis, October 17, 2008.

Note: Congestion standard for those intersections that straddle two or more policy areas is the higher of the respective congestion standards.

¹ Congestion Standard for Rural (Patuxent) Policy Area: 1,350.

² Congestion Standard for Olney Policy Area: 1,450.

Technical Staff accepted Mr. Hedberg's findings, as does the Hearing Examiner, in the absence of any contrary evidence on the issue.

Mr. Hedberg further testified as to Policy Area Mobility Review (PAMR). The subject site sits within the Rural Patuxent Policy Area, which had a 5 percent trip mitigation requirement in FY 2008. That mitigation requirement percentage is applied against the number of new trips. This application was filed on June 20, 2008 (*i.e.*, prior to the beginning of FY 2009 on July 1, 2008), and

the 5% mitigation requirement may therefore apply. Mr. Hedberg therefore identified some mitigation measures here that have a trip equivalency to this 5 percent, such as additional feet of sidewalk and handicap ramps. Exhibit 36(f), p. 26 and Exhibit 36(g), p. 7. However, according to Mr. Hedberg and Technical Staff, under the modified PAMR standards which went into effect in FY 2009, “the Rural East (Patuxent) Policy Area is operating under ‘acceptable’ conditions and developments within the policy area are not required to provide any PAMR mitigation.” [Emphasis in original.] It therefore appears that, at subdivision, no mitigation measures will be required to satisfy PAMR. In any event, Technical Staff concluded, “With the above findings, the DPA satisfies the PAMR requirements of the APF test.” Exhibit 38, p. 24.

Technical Staff concluded that, “at the time of Preliminary Plan Review, adequate solutions are available to satisfy or mitigate any transportation related potential impact concerning the proposed project.” Exhibit 38, p. 20. While concerns were raised by some members of the community about the additional traffic that would be generated, the probative evidence on this point requires a finding by the Hearing Examiner that Applicant will meet the specified standards for transportation facilities.

Parking

The proposed two-level parking facility is a significant issue in this case, regarding its compatibility with the adjacent townhouses and its historical surroundings. These compatibility issues will be discussed in Part III. E. of this report. This section addresses only the numbers and accessibility questions.

The number of required parking spaces, as originally calculated by Technical Staff (Exhibit 38, p. 17), would have called for 311 parking spaces. However, the Planning Board recommended a reduction in the maximum floor area of the new office/school building to 35,000 square feet, which concomitantly reduced the parking requirement. Applicant accepted this reduction (See Binding Element # 3), and calculated required parking as 289 spaces. According to the revised SDPA

(Exhibit 94), Applicant will provide 294 spaces (as set forth on page 21 of this report), of which 12 spaces will be handicapped accessible. There will also be 6 motorcycle spaces and 15 bicycle spaces.

Phil Perrine, Applicant's land planner, noted that under the new proposal, there would be only 55 surface spaces where there are now 66 surface spaces, and all the other required parking would be placed below grade under the surface parking. That parking will also be under the proposed Thomas Building and the proposed play area associated with it. So, the surface parking would be reduced in number and kept at about the same elevation as Maryland 108. 11/21/08 Tr. 56-57.

When asked by the Hearing Examiner whether there would be enough parking spaces expressly reserved for school drop-off and pickup to allow vehicles containing 196 students to park for five to eight minutes without queuing onto the street, Mr. Perrine responded that the Applicant is committed to ensuring to the Goddard School that the spaces would be available. If that means a sign restricting access to just the Goddard tenants, Applicant would do that. 11/21/08 Tr. 61.

Mr. Hedberg stated that, based on a previous study and actual measurements at other Goddard sites, a total of 55 parking spaces on the upper level should be more than adequate to avoid queuing at the school. Applicant will have the staff park on the lower level, so assuming a staff of 35, that would take up 35 spaces. But the school people will be arriving from 7:00 in the morning until 9:30 in the morning, and there won't be a lot of office trips that are coming in at that time. The details will worked out in a transportation management plan at Site Plan, but he concluded that there will be more than enough parking spaces. His opinion is that there will not be any queuing away from the site as a result of this present proposed parking setup. 11/24/08 Tr. 38-40. There was no contrary evidence in the record.

The evidence thus supports the finding that the proposed parking facility will provide an adequate number of spaces to support the use, and these requirements may be adjusted, as need be, by the Planning Board at Site Plan and Subdivision.

4. Environment

Applicant submitted a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420081680 (Exhibit 10) to the Planning Department, which approved it on July 24, 2008. Exhibit 38, p. 25. The NRI/FSD identifies a 4.84-acre property, which has one stream, approximately 0.60-acres of Stream Valley Buffer (SVB), and 0.75 acres existing forest on-site.

Originally, the proposed stormwater management facility was located partially in the historic area of the site, but the Historic Preservation Section of Technical Staff asked Applicant to move it to another location. Exhibit 38, p. 25. It was therefore moved to the western edge of the site and located completely underground, where it will ultimately discharge into the existing system. Although it will be underground, trees cannot be planted on top of it because the roots would interfere with the system. 11/24/08 Tr. 72-74. Unfortunately, that means that a large portion of the onsite forest will have to be removed to accommodate the relocation of the stormwater management facility. Applicant's revised stormwater management concept plan was approved by the Department of Permitting Services on October 29, 2008 (Exhibit 69).

Applicant also submitted a revised Preliminary Forest Conservation Plan (Exhibit 36(e)). Environmental Planning Staff found that the Plan complies with Section 22A of the Montgomery County Code and the M-NCPPC Environmental Guidelines, and it recommended conditional approval. Exhibit 38, p. 25. The removal of on-site forest generates a forest planting requirement of 1.27 acres. The Applicant will meet the planting requirements through an off-site forest mitigation bank. In addition, the Thomas Building will include a "green roof," and the play area on top of the parking deck will include a grass-like, water-absorbing material.

Technical Staff concluded that "[t]he amended Schematic development plan would prevent soil erosion and would preserve the natural features of the site." Exhibit 38, p. 19.

At least one of the community witnesses, Jennifer Fajman, disagreed strongly with this conclusion. 11/24/08 Tr. 53-56. She is concerned about the impact that the Thomas Building development will have on the trees and other natural vegetation currently on this site. She noted that the 1998 Sandy Spring-Ashton Master Plan, at page 67 recommends, “*Preserve trees as part of the rural character. Where trees or hedgerows occur along roads or at property boundaries, a high priority should be given to maintain the wooded character and preserve[ing] existing trees.*” Also page 32 of the Master Plan talks about recommendations for maintaining a small scale says, “*Create small parking areas that are well-landscaped, preserve trees . . .*”

Ms. Fajman argued that the off-site planting of trees proposed in the Preliminary Forest Conservation Plan does nothing to meet the Master Plan requirement for preserving trees and other vegetation. While she understands that the change in the location of the storm water management system is the reason for removing the forest, the Applicant is not planning to replace the forest on the site. Retaining trees is a priority in the Master Plan, and aids in maintaining the rural atmosphere. Ms. Fajman believes that the environment and rural entryway to Sandy Spring should not be compromised by approving the proposed schematic development plan amendment as written.

The Hearing Examiner believes that Ms. Fajman has a good point, and that Technical Staff and the Planning Board should consider, at site plan and subdivision, whether some other location for the stormwater management facility is possible to avoid the need for the removal of so much forest. On the other hand, compliance with Master Plan recommendations is not usually considered mandatory, even when an applicable zone requires a finding that the project “substantially conforms” with the Master Plan’s design guidelines and is “consistent with” its recommendations, as provided in the Sandy/Spring Ashton Overlay Zone, Zoning Ordinance §59-C-18.184 and 18.186(a). See *Trail v. Terrapin Run*, 403 Md. 523, 943 A.2d 1192 (2008).

It should be noted that the cited provisions of the Overlay Zone refer to the obligations of the Planning Board at Site Plan review, not to the Council at the time it considers a schematic development plan. It is just too early at this stage, prior to subdivision and site plan review, to determine whether the proposed location of the stormwater management facility will be offensive to the Master Plan's goals. At this point, both Technical Staff and the Planning Board voted to approve this project, which evidences that it has merit as part of a coordinated development of the region.

While a large portion of the forest may be removed along the western part of the site, a 25 foot wide tree buffer will remain and other landscaping will be added by the Applicant. As pointed out by Mr. Perrine, a 25 foot tree buffer will provide adequate screening for the western neighbors. 11/24/08 Tr. 74. If the proposed structures can be scaled and designed to accomplish other ends of the Master Plan, as discussed below, the Hearing Examiner concludes that the loss of forest anticipated here should not be dispositive.

E. Master Plan, Compatibility, Historic Preservation and Community Concerns

Concerns raised by the community cover a number of interrelated topics:

1. Master Plan compliance;
2. Compatibility of the proposed structures with the historic, rural village area in which it is set;
3. Compatibility of the proposed structures with the adjacent townhouses;
4. The impact of increased traffic; and
5. Adverse impacts of removing trees.

Items four and five have already been discussed above. This section will address the first three issues listed, and will detail the community's concerns, the Applicant's response and Technical Staff's analysis as to each..

By and large, the opposition in this case does not oppose the use proposed for the site – a pre-school (the Goddard School) and some office space. The nub of the opposition is its concern with the bulk of the proposed structures and their visual impacts upon this rural and historical setting. Community concerns about the bulk of the proposed Thomas Building were somewhat alleviated (though not eliminated) by the Planning Board's recommendation, accepted by the Applicant, that the maximum floor space for the new building should be limited to 35,000 square feet and its height to 30 feet or 2½ stories. Concerns also remain about the parking structure, a portion of which will be about 12 feet above ground level, to the top of its safety wall.

The Master Plan and Compatibility with the Rural Village Setting

The subject site is located within the area covered by the Sandy Spring/Ashton Master Plan, approved and adopted in 1998. Technical Staff's discussion of the Master Plan consisted of only the following paragraph and the conclusion that Staff supported approval of the SDPA because "the proposed use is consistent with the goals and objectives of the Master Plan" Exhibit 38, p. 12:

The Master Plan does not make specific recommendations for this property. It emphasizes rural villages as an important element of rural character in Sandy Spring. This property is located within the Sandy Spring Village Center. One of the objectives of the Plan is to "ensure that the villages of Sandy Spring and Ashton maintain separate and distinct identities." To that end, the plan made several recommendations for the Sandy Spring Village Center, including flexible provisions for parking requirements, appropriate building heights, and design review to ensure that new development maintain the small scale envisioned for a village center. It also encouraged the use of traditional village design, "active fronts" on new buildings, placement of off-street parking out of view, and use of the Sandy Spring Historic District as source for design.

Applicant's discussion of the Master Plan in its Land Planning Report (Exhibit 36(c), pp. 6-8) was more expansive, referring to specific provisions on pages 31-32 of the Master Plan (*in italics, below*, followed by commentary from Applicant's land planner, Phil Perrine, in a plain font):

The recommendations that are relevant to this Project, and manner in which the Project conforms to those recommendations, are as follows:

Maintain a “main street” character in MD 108 within the Village center.

This project proposes a building fronting onto MD 108, with a lobby that provides direct access to the sidewalk along MD 108. With the lobby area on the east end of the building, and the play area to the west, the development will provide activity along the street frontage.

Encourage development and revitalization of the Village centers.

This project will provide for a small, private school and space for commercial offices that will serve the community. The development will assist in the revitalization of the Sandy Spring Village Center by providing places of employment within Sandy Spring Village, and will, in turn, provide a source of patrons for the Sandy Spring Village Center businesses.

Provide flexibility to increase building height up to 30 feet on the commercial sites at site plan review.

The Rural Village Overlay Zone permits approval of a building height up to 30 feet, which would allow the proposed building to be of similar height to the existing buildings on Parcel A of this property.

Encourage “Active Fronts” on buildings, such as porches and street entrances.

The Project includes an active front with direct access from the building lobby to MD 108. The play area at the west end of the Property will also face MD 108, with a wrought iron fence for security. The building will have windows and doors facing MD 108.

Encourage stores and other areas that provide services to local residents and are at a compatible scale.

Both the school and the offices will provide services to the local community in the form of child care services, services provided by occupants of the commercial office space, and places of employment.

Create small parking areas that are well landscaped, preserve trees, and are compatible with nearby uses both day and night.

Parking is provided behind the building . . . with most of the parking below grade, totally out of view. Providing the majority of the parking below grade permits retention of a portion of the forested area located to the west, adjacent to existing townhouses, which will be supplemented with in-fill plantings. Landscape screening will also be provided to the south (rear) of the Property between the parking deck and adjacent townhouses. The retained portion of the existing forested area, with supplemental plantings, and the proposed landscaping around

the parking deck, along with the below grade level of the parking, ensures the parking area will be compatible with the adjacent uses.

Place most off-street parking out of view of common space and active fronts, rather than between buildings and the street.

The majority of the parking for the proposed building is below grade, out of view with the remaining parking retained to the rear, where it has low visibility from the street. This application proposes a building with an active front along MD 108 transitioning from the forested area adjacent to residential townhouses to the more active Village Center area. The existing sidewalk is retained along MD 108, which will be supplemented at the eastern, active end with a broad entrance to the building lobby. . . . The design and siting of the building and parking cause the project to be in conformance with the Master Plan recommendations.

Mr. Perrine also testified that the Thomas building would be comparable in scale to the two Montgomery Mutual buildings (Moore and Bentley) which presently exist on the site. He opined that the Thomas building, at a height of two and a half stories, with dormers, gabled roofs and facades of brick or cultured stone, would relate well to the village center. He noted that the C-T zone allows for 35 percent building coverage, while the on-site buildings, including the three other existing buildings and the proposed Thomas Building, together will result in only a 16 percent building coverage. The site's floor area ratio (FAR) of 0.42 is also in the general range of surrounding FARs. The only single-family houses nearby are four lots to the southeast, quite a distance away and separated from the site by a tree stand. There are nearby townhouses, but they will be screened by trees.

Technical Staff also found that the proposed development would be compatible with its surroundings (Exhibit 38, p. 13):

. . . By limiting the development to the standards of the C-T zone, which are more restrictive than the Development Standards of the O-M zone and overlay zone, the schematic development plan proposes an overall design that would be compatible with existing improvements on the property and nearby development, and in keeping with the character of the surrounding area. Moreover, the proposed project would be consistent with the design characteristics of the existing developments within the Sandy Spring Historic District and the Rural Village Overlay zone in terms of massing, architecture, and height of the proposed building.

Technical Staff concluded (Exhibit 38, p.1), “The schematic development plan is appropriate for the location and proposes a development that will be compatible with existing and future land uses in the surrounding area.”

Not surprisingly, some community members who testified did not agree with the analysis of Technical Staff and Mr. Perrine. Their objections centered on the proposed size and bulk of the Thomas Building in this historic rural village setting and the size and asserted incompatibility of the proposed parking facility.

Michelle Layton testified on behalf of the Sandy Spring-Ashton Rural Preservation Consortium (SSARPC), which she co-chairs. 11/21/08 Tr. 89-102; 11/24/08 Tr. 123-125. Although her home is about three miles from the Sandy Spring Village Center, the SSARPC’s mission is to support development in Ashton and Sandy Spring that conforms to the 1998 Ashton-Sandy Spring Master Plan, in order to preserve their historic rural village character. Ms. Layton cites a number of Master Plan recommendations she claims are inconsistent with the proposed development (Exhibit 38(a) and Exhibit 53). She notes that the Master Plan recognizes the importance of “*attractive entrances to the village centers [which] help establish the character of the area*” (p. 29) and recommends that development “*maintain the small scale envisioned for the village centers*” (p. 31). Moreover, the Master Plan Design Guidelines (p. 36) list, as the first two elements, to:

Preserve the rural entry experience along MD 108, Brooke Road, and Norwood/Dr. Bird Road.

Provide the critical rural setting for the Sandy Spring village center right at the edge of the village.

Ms. Layton testified that SSARPC would prefer to see a smaller footprint of the proposed Thomas Building, which sits at the edge of the historic district and at the entryway for the village of Sandy Spring, but it is their belief that the recommendations made by the Planning Board for binding elements to limit the building’s size are “a good start.” 11/21/08 Tr. 91.

SSARPC would also like to see a reduction in the parking and more open space. Ms. Layton echoed concerns raised by some Planning Board members about the buildings mass in this rural village setting. Ms. Layton opined that the Thomas Building, at least as originally proposed, would be out of character with Sandy Spring in terms of the size and massing, and the size of the parking facility, with its 296 spaces, would also be incompatible with the nearby buildings.

When asked by the Hearing Examiner to address what the Applicant is now seeking, which is what the Planning Board has recommended, a maximum of 35,000 square feet and a maximum of a two and a half story building, Ms. Layton replied, "So, yes, we would like to see you approve that as the maximum." 11/21/08 Tr. 99. Nevertheless, she indicated that SSARPC would like to see the building reduced in size. "We do believe it's too big, too tall, too long." 11/21/08 Tr. 98.

Ms. Layton's concerns about the "rural entrance experience" were echoed by Miche Booz , who appeared on behalf of the SSARPC as an expert in architecture. 11/21/08 Tr. 73-88. Mr. Booz has worked as an architect on numerous historic buildings in the Sandy Spring-Olney-Brookeville area, probably numbering 20, and he testified that he has won historic preservation awards.

He described Sandy Spring as a special place, with an overlay zone to preserve the character and historic setting in Sandy Spring. Mr. Booz testified that the proposed building's massing, detailing and location on the site are very important. He stated that the proposed building will be the first building one would see entering the historic area, and it is therefore an important gateway site to the village of Sandy Spring.

Though Mr. Booz did not see this building as being unusual in terms of its footprint, he felt that the footprint did not tell the whole story. Because the plans have been revised and no new elevations have been submitted, Mr. Booz indicated that he could not tell what this building is going to look like once it comes out of the ground. He did water color images (Exhibit 52, p. 8) attempting to capture the overriding characteristics SSARPC would like to see in the proposed building to

match the pattern set by the other buildings in the area. Mr. Booz feels quite strongly that the shape, height and disposition of the two masses (*i.e.*, the two segments of the Thomas Building) must actually be designed to appear as two separate buildings, even though they are going to be joined with a two-story connection. He hoped that the developer would work with SSARPC to come up with a compatible, contextual, appropriate design for this site.

When asked by the Hearing Examiner whether he accepted the Planning Board's recommendation of a maximum of a 30-foot tall building, two and a half stories in height and with a maximum floor area of 35,000 square feet, Mr. Booz testified that he did not have a problem with the footprint, *per se*, but he and SSARPC would be happier with a building that was closer to 30,000 square feet, designed to be similar to his field sketches in Exhibit 52. He did not object to the plan insofar as the binding elements suggested by the Planning Board, but was concerned about matters of architecture and design.

Alan Meyers was called by Applicant as an expert in architecture in response to Mr. Booz's testimony. He testified (11/21/08 Tr. 224-235) that the project was in compliance with the C-T Zone and Overlay Zone development standards. He further stated that the main portion of the building, the 165 foot portion along MD 108, is a two and a half story building, with a rather traditional pitched roof on it. The other part of the building will be 50 feet off the street and offset 33 feet from the face of the major portion of the building. It will be only one and three-quarter stories high, and will have the same kind of a pitched roof. Mr. Meyers noted that Applicant's current proposal is very similar in mass to Mr. Booz's proposal. In Mr. Meyers' opinion, the final design of the Thomas building can be made to be compatible with the historic district adjacent to it. In an effort to insure

compatibility with the design of nearby structures, Applicant included “Site Plan Notes” on the SDPA, which call for the use of dormers and for cultured stone and brick in the facades.¹⁴

Nevertheless, Allen Wright, who lives near the site on Meetinghouse Road, testified that the proposal is not consistent with either the Master Plan or the Sandy Spring/Ashton Overlay Zone, which calls for compliance with the Master Plan. In his letter to Technical Staff (Exhibit 54), Mr. Wright observed that “the paramount goal of [the Master Plan] is to preserve the rural character of the area.” Mr. Wright described the new proposal as “clearly a case of overdevelopment on a very small site driven by the economics of the project without thought for . . . fitting into the surrounding community.” 11/21/08 Tr. 106. Mr. Wright characterized the proposal as “a cityscape with border to border construction. The view from either side, from the west or the east, will be monolithic.” 11/21/08 Tr. 107.

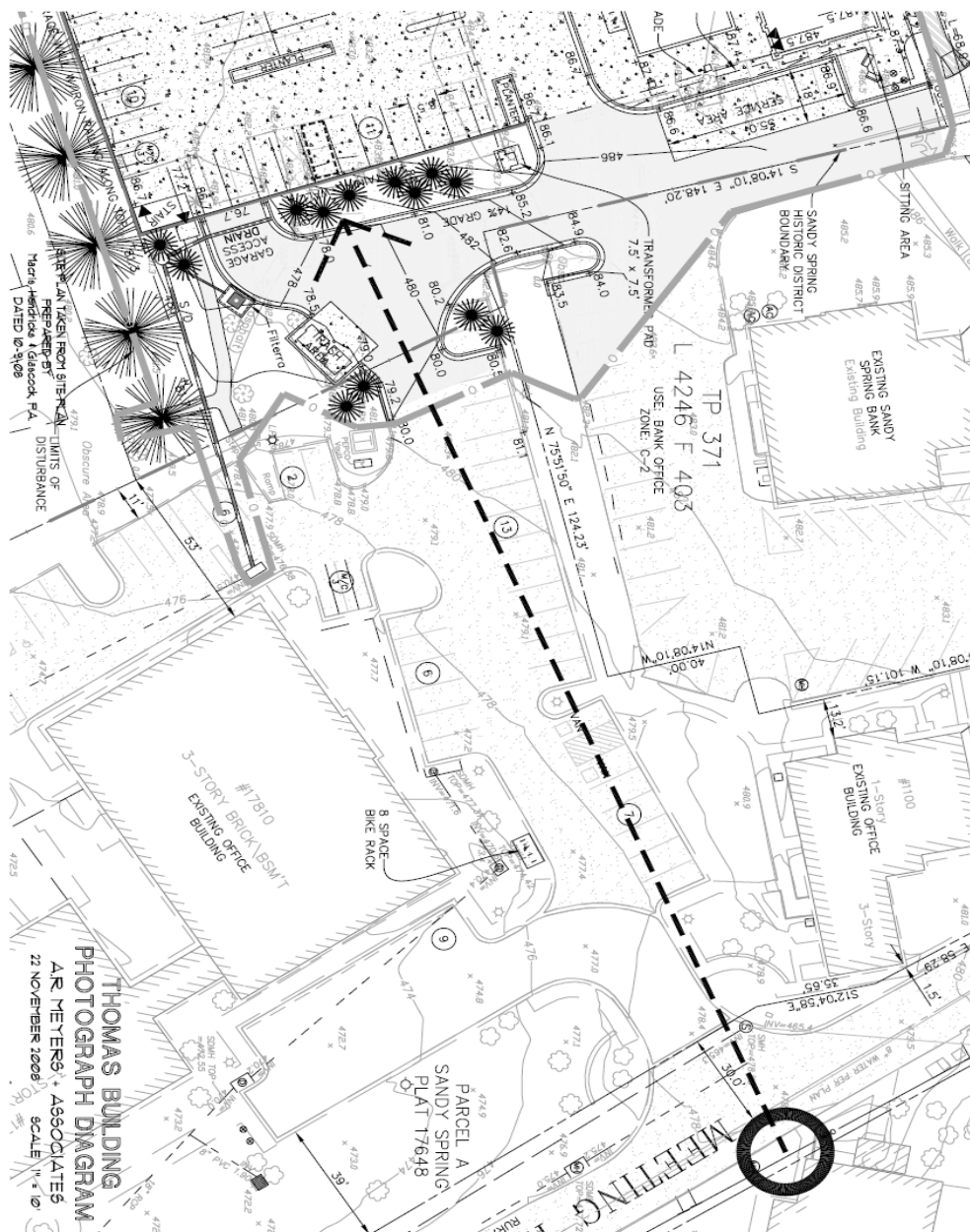
In Mr. Wright’s opinion, “the parking garage is not a feature that anyone would associate with a rural village” and is not consistent with the Sandy Spring-Ashton Rural Village Overlay Zone and the Master Plan. It is at the entryway to Sandy Spring and adjacent to the most historic part of town, the Friends Meeting property. 11/21/08 Tr. 107. Mr. Wright would like to see the Thomas building limited to 30,000 square feet of floor space, with no parking garage, which he felt could never be compatible with the historic area. Even though the facility would be mostly underground, at the back of the parcel, it would be partially above ground, with a protective wall, cars and lighting on top. Mr. Wright does not believe that would look rural or historic in any way. As he put it, it “begins to look more like a city block than any kind of a rural view.” 11/21/08 Tr. 112.

Mr. Wright’s objection to the parking facility is that, as presently proposed, a significant portion of the top deck will protrude above ground level. The top deck will be at ground level at

¹⁴ Applicant had proposed these Notes as binding elements, but after consulting with the People’s Counsel and community members, it was determined that because they are not development standards, they are more appropriately listed as Site Plan Notes to allow the Planning Board flexibility at site plan review.

the point where it meets the rear of the proposed Thomas building (*i.e.*, the deck's northern edge), but due to the declining grade from north to south, a significant part of the top deck will be above ground. At its highest point relative to the ground (*i.e.*, the southeast corner), it will be 12 feet above the ground, measuring to the top of the safety wall on top the deck. 11/24/08 Tr. 77.

This issue was the subject of much discussion at the hearing. In response, the Applicant produced a diagram (Exhibit 77(a)) and a photographic simulation (Exhibit 77) to show how the parking facility would look from Meetinghouse Road. They are reproduced below:





The pine trees depicted in the center of the photograph are simulations to demonstrate how the view of the parking facility deck will be almost entirely obscured when viewed from Meetinghouse Road. Applicant proposes to plant trees in the green area in between the upper deck drive and the lower deck drive, to screen the parking facility wall at that point. Mr. Perrine believes that from Meetinghouse Road, you will not be able to really see the opening to the lower garage level and will see little of the structure itself. He noted that the amount of surface parking would drop from 66 to 55, and much of the parking would be out of view. 11/21/08 Tr. 57.

It will be 75 feet from the northernmost townhouse to the west of the site to the parking structure itself, and 85 feet to the proposed building. It will be 55 feet from the townhouses at the rear of the site (*i.e.*, to the south), to the back edge of the parking structure. Mr. Perrine noted that a parking structure is not among the items precluded in the Overlay Zone. In Ashton, the Planning

Board did approve an open parking deck similar to this, but it is in an area where there is a shopping center.

According to Mr. Meyers (11/21/08 Tr. 229-235), if the parking were all lowered, it would be very difficult to bring the children into the school building. If the lower level were completely underground, it would have to have significant retaining walls all the way around it, and that would be a considerable cost, perhaps another 25 percent of the cost of the parking lot. Were you to obscure the parking completely below ground and put a deck on top, there would be a need to evacuate the air out of the lower level, which would require big exhaust shafts that are not particularly desirable environmentally in this area. It would also be very, very difficult from a grading standpoint, and possibly dangerous. His expert opinion is that it is not practical to have the lower level any lower than it is now in the planned garage.

When asked by the Hearing Examiner about the architectural compatibility of the garage front, the visible garage front or sides with the adjacent to the historical district, Mr. Meyers stated that the garage would be so sunken under the building and so obscured by landscaping and grade levels that not much of it would be seen. Moreover, it will have a wall that stands two and a half feet high above the deck, which will obscure the headlights. The view of the garage from Meetinghouse Road will be very minimal and mostly obscured.

Technical Staff also found (Exhibit 38, p. 13):

The proposed building and garage structure are adequately screened and buffered from the adjacent RT-10 zoned townhouses to the west and south. Screening and buffering of the proposed building from the townhouses include a 64 foot setback (from the western property line), an underground SWM area, landscaping, and retention of existing mature trees supplemented with additional new planting (south and west). The parking structure, which would be constructed on the currently existing surface parking area, would be sitting approximately six feet above the finished ground grade (due to a drop in elevation) along the south property line. The parking garage would be set back 25 feet from the adjoining townhouses to the south and would be screened by landscaping.

People's Counsel, Martin Klauber, stated that the main question in this case is whether the addition of the proposed building in the schematic development plan will be compatible with the surrounding area where the subject site is located. Mr. Klauber noted that very important issues in this case will be reviewed at site plan and subdivision. He concluded that "a prima facie case has been made for compatibility," and he recommended approval of the SDPA. 11/24/08 Tr. 121-123.

The Hearing Examiner has carefully considered the countervailing observations and arguments arrayed above. The community members certainly have raised legitimate concerns about the importance of Master Plan compliance in order to maintain the rural village character of the area. However, Master Plans are usually not considered binding, but rather are recommendations. *See Trail v. Terrapin Run, supra*. Moreover, it must be remembered that the subject site is not just in the Sandy Spring/Ashton Overlay Zone; it is also in a commercial zone (the O-M Zone), and therefore it is expected that it may have some elements that look more commercial than residential. While the Hearing Examiner agrees with Mr. Wright that the central thrust of the Master Plan is to preserve the rural village character of the area, it is by no means clear that this project cannot accomplish that goal. It has many positive aspects, as enumerated by the Applicant and quoted at the beginning of this section.

As mentioned above in connection with the stormwater management facility placement issue, it is too early to tell what design elements will be established at subdivision and site plan review to insure preservation of the rural village character of the area. The question at this stage is whether the proposed development, given its binding elements, can be made consistent with the rural village character, after its design is completed at site plan. If the Planning Board determines that the Thomas Building must be even smaller than the maximum of 35,000 square feet, it is free to require that. Similarly, if the Board feels that the parking facility must not protrude significantly above ground, it

has the power to so order, even if that would require a reduction in the size of the project.¹⁵ Nothing in the binding elements prevents such changes.

Given the maximum parameters recommended by the Planning Board and accepted by the Applicant in binding elements, the Hearing Examiner finds, as did Technical Staff, the Planning Board and the People's Counsel, that maintenance of the rural village character can be accomplished by an appropriate review of design features which will take place at site plan review. Site plan review is the focus of the applicable SSRVO Zone provisions, Zoning Ordinance §59-18.186 and §59-C-18.184, referenced by Mr. Wright, and not review by the Council.¹⁶

Compatibility with Adjacent Townhouses

Two of the community witnesses who testified in opposition, Jim Castagna and Katherine Virkus, live in Sandy Spring Village, the townhouse community adjacent to the site.

Jim Castagna testified (11/24/08 Tr. 56-67) that he is the president of Sandy Spring Village Condominium Association, but his testimony was on his own behalf because the Association did not go through any formality to establish its views, and he did not file any document in advance of the hearing indicating he would be testifying for a condominium association.

Mr. Castagna testified that his community borders this property directly to the south and west, and it is the most directly and adversely affected by this plan. He feels as though the Thomas building is too big for Sandy Spring, and that this is a building that belongs in Rockville more than it does in Sandy Spring.

¹⁵ Although Applicant presented testimony to the effect that it would be impractical and prohibitively expensive to lower the garage even further into the ground than already planned (11/21/08 Tr. 229-235), it would have no choice if the Planning Board felt it necessary to ensure compatibility with the historic area and maintain the rural village setting. *See Coscan Washington, Inc. v. Maryland-National Capital Park and Planning Commission*, 87 Md. App. 602, 625; 590 A2d 1080, 1091; *cert. den.*, 324 Md. 324 (1991), holding, *inter alia*, that the Prince Georges County Planning Board, in reviewing a final design plan, had the authority to establish conditions necessary to preserve an adjacent historic area.

¹⁶ Zoning Ordinance §59-18.185, also referenced by Mr. Wright in his argument about the Master Plan, mentions the Master Plan only in the context of "properties in a residential zone." This property is in a commercial zone.

Mr. Castagna opined that the parking garage will affect his neighborhood even more than the Thomas building. He noted that the parking garage is going to be approximately 8 yards from the townhouse fences and will be above the townhouse fence lines, so residents looking out of their windows will see cars and children playing in the playground, which will hurt property values.

Mr. Castagna also objected to the change in the stormwater management system, because it will cause the water to flow in the direction of the townhouses, which already have a flooding problem. He expressed concern, as well, about the loss of the majority of the forest. While Mr. Castagna does not oppose the school, *per se*, he feels that the proposed building needs to be downsized to the point that the parking lot stays at ground level, like it is now.

Mr. Castagna realizes that a 25 foot tree buffer will remain on the west, but most of the remaining trees will be smaller ones which do not offer as much screening. He indicated that the tree line along the southern property line is “already fairly bare. The woods are basically on the west side.” 11/24/08 Tr. 65.

Katherine Virkus testified (11/24/08 Tr. 67-71; 1/13/09 Tr. 38-39) that she has been a resident of Sandy Spring Village for 21 years. Ms. Virkus stated that Sandy Spring Village is a small enclave of 39 town homes which abuts the subject site, and that her community “will be greatly impacted by the massive building and the massive two-level parking garage.” 11/24/08 Tr. 68. She does not oppose there being a school; the problem is the size of the project and the removal of trees. Ms. Virkus noted that the proposed building and two-level parking facility will occupy most of the available site, and the southwest corner of the parking garage will be just steps from one of the townhomes. Moreover, most of the older trees, which provide an excellent buffer from the commercial area of Sandy Spring and also protect the community from street noise and air pollution, will be removed, and reforestation will take place off site.

As is apparent, the community witnesses do not object to the proposed use – a pre-school and office space; it is the perceived size of the project and proximity to their homes that concerns them. As noted above in connection with the rural village compatibility issues, compatibility can be accomplished by an appropriate review of design features which will take place at site plan review, subject to the maximum parameters recommended by the Planning Board and accepted by the Applicant in binding elements.

The same is true regarding compatibility with the adjacent townhouse community. The final plan for the Thomas building and its associated garage may be smaller than currently proposed, if the Planning Board requires. This is a schematic development plan case, which means that only the elements that are specified as binding cannot be changed without getting future Council permission. The relevant binding elements establish maximums; none of them requires the building and garage to achieve the full size currently proposed by Applicant.

It should also be observed that there is currently a parking lot adjacent to the townhouse community, which has more parking spaces than are planned for the same area on the top deck of the proposed parking facility. Although the western side has a larger tree buffer than would exist after the proposed development, this project would not be removing a pristine, car-free view and substituting a garage. Rather, it would be removing a 66-car parking lot and substituting a 55-car parking deck, which will be at ground level on the north, and at its highest, nine feet above ground at the southeast corner, with an additional three-foot safety wall, all of which will be screened. Other new parking will be underground. As stated by Technical Staff, “[t]he proposed building and garage structure are adequately screened and buffered from the adjacent RT-10 zoned townhouses to the west and south.” *See* Exhibit 38, p. 13, quoted at greater detail on page 43 of this report.

Given this record, the Hearing Examiner finds that review at site plan and subdivision can result in a development that is compatible with its neighbors.

Historic Preservation

As discussed earlier in this report, a significant portion of the entire site is within the Sandy Spring Historic District, but neither of the newly proposed structures is within the designated historic area. The map on page nine of this report shows the eastern portion of the site within the historic district, but not the western portion of the site where the Thomas Building and the associated parking structure are to be located. However, the proximity of the construction area to the historic district, and the fact that about half of the subject site is actually within that historic district raised the question as to whether review by the Historic Preservation Commission (HPC) is required in this case. As mentioned earlier, the Historic Preservation Section of Technical Staff, which serves as the staff of the HPC, did not recommend review by the Historic Preservation Commission (HPC).

Exhibit 64. What they did say was quoted in the Technical Staff Report, Exhibit 38, pp. 25-26:

...The proposed development plan is located adjacent to Master Plan Historic District #28/11 Sandy Spring Historic District. The revised plan has responded to the comments of the Historic Preservation Section by relocating the storm water management facility outside the historic district boundary and preserving tree #30 within the historic district. As a result of these revisions the proposed development plan does [not]¹⁷ require the review and approval of the Montgomery County Historic Preservation Commission.

The proposed building and site should be designed to fit sensitively within the existing setting of the area and specifically with the adjacent historic district along the south side of Olney-Sandy Spring Road (Route 108). A context-sensitive building and site design will take its cues from the basic visual characteristics of the buildings within the historic district as well as the commercial structures adjacent to the district. Design elements drawing from the rural village character of Sandy Spring are preferred. Materials such as brick, stone and other traditional building materials are preferred. The massing of the building should be designed to reduce the buildings apparent size in order to make it more compatible with the scale of smaller commercial buildings in the area.

¹⁷ The word “not” was added as a correction to page 25 of the Technical Staff report (Exhibit 38) by the Historic Preservation Section of Technical Staff. Exhibit 64. They had inadvertently left out the crucial word “not” from the sentence in their original memo attached to the Staff report (Exhibit 38). They meant to say that review by the HPC is not required.

The Historic Preservation Section encourages continued consultation with the Development Review Department Site Plan staff, Historic Preservation staff and community to further develop the details of the proposed building and site.

The Hearing Examiner's review of the Historic Preservation provisions of the Montgomery County Code, Chapter 24A, following the second day of hearing, led him to conclude that the Historic Preservation Commission (HPC) must be given the opportunity to review this matter, in conjunction with Site Plan review and Subdivision. He therefore issued an Order on December 12, 2008 (Exhibit 81), informing the parties that he was considering recommending that the Council condition its action with a requirement that this matter be submitted to the HPC in conjunction with Site Plan review and Subdivision. The December 12, 2008 Order also set up an additional hearing date on January 13, 2009, to give Technical Staff and the parties the opportunity to further comment on this issue, with the benefit of the Hearing Examiner's analysis, as quoted below from the Order:

Code §24A-1 describes the purpose of the historic preservation provisions:

It is the purpose of this chapter to provide for the identification, designation and regulation, for purposes of protection, preservation and continued use and enhancement, of those sites, structures with their appurtenances and environmental settings, and districts of historical, archeological, architectural or cultural value in that portion of the county which is within the Maryland-Washington Regional District. Its further purpose is to preserve and enhance the quality of life in the county, safeguard the historical and cultural heritage of the county, strengthen the local economy, stabilize and improve property values in and around such historical areas, foster civic beauty and to preserve continued utilization and pleasure of the citizens of the county, the state, and the United States of America. [Emphasis added.]

Code § 24A-2 defines "Appurtenances and environmental setting" as

The entire parcel, as of the date on which the historic resource is designated on the master plan, and structures thereon, on which is located an historic resource, unless reduced by the District Council or the commission, and to which it relates physically and/or visually. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), vegetation (including trees, gardens, lawns), rocks, pasture, cropland and waterways. [Emphasis added.]

An Historic resource is defined by the same code section as:

A district, site, building, structure or object, including its appurtenances and environmental setting, which is significant in national, state or local history, architecture, archeology or culture. This includes, but is not limited to, all properties on the "Locational Atlas and Index of Historic Sites in Montgomery County."

Among the Powers and Duties of the HPC, Code §24A-5(j) lists:

(j) To advise the planning board, in the event of subdivision of land containing an historic resource, on the appurtenances and environmental setting necessary to preserve it. [Emphasis added.]

Code §24A-6(a)(2) provides:

(a) Required. An historic area work permit for work on public or private property containing an historic resource must be issued pursuant to the provisions of this chapter before:

(2) Performing any grading, excavating, construction or substantially modifying, changing or altering the environmental setting of an historic site or an historic resource located within an historic district; [Emphasis added.]

As the underlining in this Chapter 24A emphasizes, the “*environmental setting*” of an historic sight is broadly defined to include “*the entire parcel*” on which an historic resource is located and “*to which it relates physically and/or visually.*” Given this language, it appears to the Hearing Examiner that the entire subject site, about half of which is in an historic district which certainly relates visually to the proposed new structures, is all part of the defined “*environmental setting.*” As such, the HPC’s role is to advise the Planning Board in this case. Moreover, an historic work permit may be required for any work on the subject site under the language contained in Code §24A-6(a)(2), quoted immediately above. At the very least, the HPC should be given the opportunity to review this proposal to determine its own jurisdiction.

Scott Whipple, Supervisor of the Historic Preservation Section of Technical Staff, responded to this Order on January 5, 2009, with a memorandum reasserting Staff’s position that HPC review was not called for because “the project work was determined to be beyond the limits of the Sandy Spring Historic District (#28/11) and therefore not subject to the Montgomery County Historic Preservation Ordinance (Code), §24A-6(a)(2).” Exhibit 86.

This position was supported at the January 13, 2009 hearing by Applicant's counsel, who argued that the Historic Preservation provisions of the Montgomery County Code, Chapter 24A did not require HPC review because the tax parcel on which construction will occur (as distinguished from the overall site) is outside the Historic District, and because, under their interpretation of the Code, the "environmental setting" does not extend outside the Historic District. 1/13/09 Tr. 18-32. Nevertheless, Applicant did not object to a condition in the Council resolution requiring submission of the matter to the HPC for it to determine its own jurisdiction in conjunction with site plan review and subdivision. 1/13/09 Tr. 51-52.

Members of the community feel strongly that HPC review is required (Ms. Layton, on behalf of the SSARPC, 1/13/09 Tr. 37-38; Katherine Virkus, 1/13/09 Tr. 38-39; Jennifer Fajman, 1/13/09 Tr. 41-42; and Alan Wright, 1/13/09 Tr. 43-50). Mr. Wright also argued that the HPC review should take place prior to the Council's review for fear that Council approval of the SDPA would be viewed by members of the HPC as approval of the basic design, leaving only architectural details to them. 1/13/09 Tr. 56-58.

Martin Klauber, the People's Counsel, agreed with recommendation suggested in the Hearing Examiner's December 12, 2008 Order (1/13/09 Tr. 33-34):

I absolutely agree with that statement of the hearing examiner, and I do believe . . . there is an appropriate and administrative part of the existing regulatory process where the HPC should, based on the facts of the public interest and the compatibility in the record of this case, be given the opportunity, and that is as part of the Planning Board site plan review. I do believe that the District Council in this case can make that, and it's more than a recommendation, can make that instruction to the Planning Board, that the Planning Board refer this case [to the HPC in conjunction with site plan review].

Mr. Klauber argued strenuously against review by the HPC prior to subdivision and site plan because the details to be reviewed have not yet been determined. He agreed with there being a condition in the Council Resolution requiring that the matter be submitted to the HPC in conjunction with subdivision and site plan review to let that body determine its own jurisdiction in this case. If

the HPC concludes that it should review the matter, then the HPC would have the opportunity to do so at that time. 1/13/09 Tr. 33-34.

The Hearing Examiner has carefully considered the arguments set forth above and concludes that submission to the HPC for it to determine its jurisdiction in conjunction with subdivision and site plan review is necessary in this unusual case to insure compliance with the Chapter 24A of the Montgomery County Code. While Technical Staff's reluctance to extend the coverage of an historic district outside of its boundaries is understandable, this is a case where the historic district sits squarely on half of the entire subject site, and will clearly be directly affected visually and functionally by the proposed development.

Applicant argues for a very narrow definition of the word "parcel." Here, one could certainly conclude that "parcel" as used in Chapter 24A was meant in the broader sense to encompass the entire site under review.¹⁸ It is also possible that, at subdivision, the entire site may become one parcel. In any event, the answer to these jurisdictional and practical questions should come from the body charged with carrying out the provisions of Chapter 24A, the HPC. Fortunately, all parties have accepted the Hearing Examiner's suggestion that the Council should condition its approval of the SDPA on the Planning Board referring this matter to the HPC to determine HPC's jurisdiction and for that body to review the substance of the proposal if it determines that it has jurisdiction to do so.

As to the timing of that referral, there was some disagreement at the hearing. The Applicant, the People's Counsel and most of the community members were agreeable to the referral to the HPC being made in conjunction with subdivision and site plan review. Alan Wright, however, argued for HPC review prior to Council review of the SDPA. As mentioned above, the People's Counsel emphasized that such an early referral would lack the details necessary for an appropriate HPC review.

Although the Hearing Examiner understands Mr. Wright's concerns, he accepts as the People's

¹⁸ The word "parcel" is not defined in either Chapter 24A of the Code or in the Zoning Ordinance. It is defined in Black's law Dictionary, 7th Ed., as either a small package or bundle, or a "tract of land."

Counsel's reasoning as being more in line with accepted practice in this jurisdiction, that HPC review should occur in conjunction with subdivision and site plan review, when more of the details of the proposal will be known.

The Hearing Examiner is very concerned about the issue of whether the proposed parking deck will be compatible with the adjacent historic district. It will not be very visible from Meetinghouse Road, as demonstrated by Exhibits 77 and 77(a), reproduced on pages 41-42 of this report, but it will be increasingly visible as one approaches it walking through the historic district from Meetinghouse Road. While the parking structure may not incompatible with the nearby townhouses, given its low profile and planned screening, that does not mean that a parking facility of this sort fits into the historic sensibilities of the area. Yet, the proposed SDPA gives the Planning Board and the HPC sufficient flexibility to insist on modifications to the illustrative plans in order to make them conform to their expert determination of what is proper in this historic context.

Given these circumstances, the Hearing Examiner finds that the SDPA, as currently proposed, is appropriate at this stage of review, and capable, under its binding elements, of producing a project compatible with its surrounding development and consistent with applicable historic preservation law.

IV. SUMMARY OF THE HEARING

The hearing extended over three days, November 21, 2008, November 24, 2008 and January 13, 2009. Applicant called six witnesses at the hearing, Fred Nichols, a representative of Applicant, Stabler 1848, LLC; Alec Yeo, a Goddard School franchise owner; Phil Perrine, a land planner; James Hendricks, a civil engineer; Alan Meyer, an architect; and Craig Hedberg, a transportation engineer. Martin Klauber, the People's Counsel, participated but did not call any witnesses. Six witnesses testified against the proposal: Michelle Layton testified on behalf of the Sandy Spring-Ashton Rural Preservation Consortium (SSARPC); Alan Wright, Jennifer Fajman, Jim Castagna and

Kathy Virkus offered their individual lay testimony; and Miche Booz testified as an expert in architecture on behalf of SSARPC.

At the beginning of the hearing, the Hearing Examiner announced that he planned to take official notice of the record in LMA G-627, which is the case under which the subject site was rezoned to its present zone. He then put the Council's Resolution in that case (11-1397 dated April 25, 1989) and the 1989 Hearing Examiner's report into this record. 11/21/08 Tr. 9.

At the beginning of the second day of hearing, the Hearing Examiner put into the record, as Exhibit 64, a memorandum dated November 24, 2008, from Technical Staffer Joshua Silver, stating that he had made a typo in his earlier report, attached to the Technical Staff report, by inadvertently leaving out the word "not" from a critical sentence. The sentence should read, "'As a result of these revisions, the proposed development plan does not require the review and approval of the Montgomery County Historic Preservation Commission.'" 11/24/08 Tr. 4-5.

There was also a discussion, at the beginning of the second day of hearing, between counsel and the Hearing Examiner regarding SSARPC's request (Exhibit 65) that the proposed development be referred at this stage to the Historic Preservation Commission (HPC) for review. Mr. Klauber and Applicant's counsel argued that the question of HPC review would be addressed at site plan, and that its consideration was premature at this stage. Mr. Klauber noted that the historic review is not a development standard for the OM Zone or the CT Zone, and therefore should not be a binding element. Applicant's counsel suggested that SSARPC could make their request at site plan, but she felt that this was not a matter for HPC review because the proposed structures are not actually in the Historic District. The Hearing Examiner indicated that if there was not enough in the record to decide this issue, he would reconvene another hearing. 11/24/08 Tr. 6-17.

The third day of hearing, January 13, 2009, was necessitated because minor changes had been made to the binding elements, at the suggestion of Technical Staff, and because the Hearing

Examiner felt it appropriate to give the parties an opportunity to respond to his interpretation of the Historic Preservation provisions of the Montgomery County Code, Chapter 24A.¹⁹ On the final day of the hearing, there were no objections to the binding elements, as modified to incorporate Technical Staff's changes. Members of the community argued for requiring HPC review, but Applicant opposed making such a requirement a binding element or a site plan note.

Applicant argued that the Historic Preservation provisions of the Montgomery County Code, Chapter 24A did not require HPC review because the parcel on which construction will occur (as distinguished from the overall site) is outside the Historic District, and because, under their interpretation of the Code, the "environmental setting" does not extend outside the Historic District. 1/13/09 Tr. 18-32. Nevertheless, Applicant did not object to a condition in the Council resolution requiring submission of the matter to the HPC for it to determine its own jurisdiction in conjunction with site plan review and subdivision. 1/13/09 Tr. 51-52.

Applicant introduced a final, executed copy of the covenants (Exhibit 93) and a final revision of the SDPA (Exhibit 94). As required by Zoning Ordinance §59-D-1.74(d)(2), the record was closed at the completion of the hearing.

A. Applicant's Case in Chief and Rebuttal

1. Fred Nichols (11/21/08 Tr. 25-32):

Fred Nichols testified that he is a representative of Applicant, Stabler 1848, LLC. Stabler 1848 was formed as an LLC by a group of local investors, and the LLC purchased the subject property from Montgomery Insurance in 2005. At that time, three buildings already existed on the property. Nichols Development is a contract advisor to Stabler 1848 LLC, but does not have an ownership interest.

¹⁹ See Hearing Examiner's Order of December 12, 2008 (Exhibit 80).

Mr. Nichols explained how the present proposal involving the Goddard School came to pass and stated that Applicant tried to meet with all the adjoining property owners in an effort at community outreach. The proposed size of the building and parking was derived from the needs of the Goddard School.

2. Alec Yeo (11/21/08 Tr. 32-52):

Alec Yeo testified that he is the franchise operator of the Goddard School of Eldersburg. There are 300 such franchises in the country. Mr. Yeo and his partner have been looking for a location in Sandy Spring to open a Goddard School since 2005.

As described by Mr. Yeo, Goddard School takes children as young as six weeks, and goes up to kindergarten, but the proposed Goddard School location here would not have a kindergarten. The difference is that Goddard has staff that meet not only the requirements for childcare, but also are licensed by the Maryland State Department of Education. There are four year degree teachers teaching the children. From an academic point of view it's not just the process of making sure that they're happy and safe during the day, which is a priority, but also making sure that they are truly prepared and advanced for their academic career.

The classrooms themselves are very strictly regulated by the State of Maryland with regards to a specific square foot requirement per child, and within that also a group size per child per grouping. Each of the ages has its own ratio, and so the school will have 13 rooms, each of which is designated with a certain square footage, plus administrative offices, a staff resource room and bathrooms for the facility.

There's also an equivalent number for outside playgrounds as well. For each child there must be a certain square footage set by the State of Maryland. These are high end playgrounds

with a poured rubber surface. This is a high end facility to protect the safety of the children and also make it a fun learning environment for them as well.

Mr. Yeo further testified that the school has a maximum capacity of 196 children. That would be the maximum number that would be on site on any specific day. A good number of families bring two children to the facility at the same time. The drop-off and pickup procedures require that parents park their cars and bring their children into the building. They must go in and present the child to the teacher, let the teacher know and the teacher accepts the child into the teacher's care. There's no central place that they drop the child off. They bring the child physically to the classroom. It usually takes between about five and eight minutes and then the parents are back out again. The same thing happens in the afternoon, but the afternoon pickup is spread out over a longer period of time, depending on work schedules and other factors.

The school also has a half day program that runs from anytime they wish to drop off, typically prior to 9:00 a.m., through 1:00 p.m. And, this would be a program that would get a large percentage of the educational activity. So, the big pressure in terms of parking spaces would be the morning because in the afternoons people leave at many different times.

For safety sake, the school must be located all on one floor, the ground floor. It is also difficult operationally to run a center on two levels. The facility is open from 7:00 a.m. to 6:00 p.m., but three staff arrive about 6:45 a.m. to turn on the lights in the building, make sure that there are no problems and open the facility. Staff is increased in half hour increments based on the attendance and arrival of the children. It usually goes up to about full staff around ten and then takes a little bit of a change during their lunch time. There are no scheduled evening activities. There occasionally may be a PTA type meeting, but that is not a scheduled activity. There are

about four of those per year. There are no holiday programs that go on at night and no weekend activities.

According to Mr. Yeo, the school would have several different programs that involve community interest and bringing speakers and people in. The school would welcome and encourage a partnership with any of the local organizations to come in and speak to the children and assist with a curriculum that would be appropriate.

As to how the school would interact with those using the office space above, Mr. Yeo testified that the school would have an electronically secured entrance that was isolatable for just the children and families. People that would be going to businesses upstairs will not have access in any way to the school facility. Also, the school's parking is immediately adjacent to the schools entrance, which is in the rear. The distance to the building itself is not going to endanger the safety of the children. The staff would be parking in the more distant, less desirable spaces as their vehicles would stay during the day. And, those would be designated on site.

3. Philip Perrine (11/21/08 Tr. 52-69,133-223; 11/24/08 Tr. 72-114):

(11/21/08 Tr. 52-69):

Philip Perrine testified as an expert in land planning. He described the subject site, noting that one of the three buildings on the site, the Stabler building, was built about 1904. It predated the current zoning and has a setback of less than the C-T or O-M Zones. The other two buildings are the Moore and Bentley buildings, which are three story, brick structures.

There is a small amount of parking between Meetinghouse Road and the buildings. Most of the parking is to the rear of the building, to the west. There are about 66 spaces on the western side of the site, the location of the proposed development. Under the new proposal, there would be only 55 spaces where there are now 66 spaces, and all the other required parking would be placed

below grade under the surface parking, and under the proposed building and the proposed play area associated with it. So, the surface parking would be reduced and kept at about the same elevation as Maryland 108. Applicant had calculated that 25 spaces seemed to be sufficient for student drop-off, based on a number of studies at other facilities, but in accordance with the staff suggestion, Applicant computed parking for the school based on daycare standards - one space for six children. That turns out to be 33 spaces, plus the 30 for the staff, which adds up to 63 spaces for the school. The office users would park on the lower level, under the building.

Mr. Perrine further testified that there will be a lobby and entrance at the northeast corner of the building, so people can walk in off of the surface if they care to, or off of 108 into the building. There's also an elevator from the lower level parking. The first floor has an separate entrance just for the school, which provides a great degree of security.

When asked by the Hearing Examiner whether there would be enough parking spaces expressly reserved for school drop-off and pickup to allow vehicles containing 196 students to park for five to eight minutes without queuing onto the street, Mr. Perrine responded that the Applicant is committed to ensuring to the Goddard School that the spaces would be available. If that means a sign, Applicant would do that, restricting access to just the Goddard tenants. This issue will be addressed at site plan review.

Mr. Perrine indicated that there will be low fencing around the outdoor play areas to keep the kids together and keep them secure. The entrance to the building is roughly at grade at the eastern end. Heading to the west to about the end of the first -- the east section of the proposed building, the grade starts to drop to where at the far western end, where the parking structure ends, there's about a four foot drop in grade. The ground and sidewalk in front of the building is about four feet below that finished first floor of the building. So, the play area fronting on MD 108

would be about four feet above the ground, with the parking facility beneath it, and, there'd be a black wrought iron style rail fencing to contain the children.

Mr. Perrine pointed out the townhouses to the south and west of the subject site, and he noted that Applicant was proposing “a revised version of the schematic development plan with the additional binding elements to it.” 11/21/08 Tr. 63-64. [Mr. Klauber observed that there were new binding elements “that have nothing to do with the development controls and that are site plan elements. . . . there's things that are not appropriate binding elements that are on here.” 11/21/08 Tr. 66. Subsequently, Applicant removed three of the 10 newly proposed binding elements, leaving 11 binding elements, 7 of which were new, on the revised SDPA.]

Mr. Perrine testified that initially the storm water for the new development was going to be brought over to the existing facility on the southeast of the site. The Department of Permitting Services, Storm Water Management preferred that it be set forward on the western portion, so storm water management will be provided underground in the space adjacent to the parking structure, to the west of the proposed Thomas building. On the surface it will be a green open area with no trees, but with some appropriate plantings. There is a 25 foot strip along the west and southern property lines adjacent to the townhouses where there would be no clearing of trees, and Applicant would landscape the area with additional trees and native species indigenous plantings to cause it to appear like a more natural growth there.

(11/21/08 Tr. 133-223):

Mr. Perrine explained that the upper level of the garage, as planned, would be at the same level as the school entrance and that if the bottom level were sunk lower, air handlers would have to be added.

Mr. Perrine introduced photos of the surrounding area buildings in Exhibits 57 and 58, and an aerial photo of the area (Exhibit 59). He noted that there are commercial buildings along MD

108 in the vicinity of Brooke Road and Meetinghouse Road. Three buildings that appear residential that are actually used for businesses. He agreed with the definition of surrounding area, a 1,000 foot radius from the site, employed by the Council in the zoning case, G-627, and adopted by Technical Staff in this case. That takes you just past Norwood Road to the west, and to the east, it comes back past Auburn Village Drive. It incorporates most of the village center. It includes the fire station and the Meetinghouse. There are commercial uses in there and single-family homes fronting along MD 108 to the east and townhouses off of Sky Meadow Way.

Also, The townhouses that have access to Norwood Road just south of the subject site are included, and there's a couple of single-family homes down Norwood Road. And it includes the commercial buildings all in the center of the center. He characterized the surrounding area as predominantly commercial uses with some residential near the edge of it.

The Master Plan's idea is to provide two rural villages, Sandy Spring and Ashton, with recommendations that are fairly specific to give some guidance as to what would be consistent with a rural village. On page 29 in the Master Plan, there are some recommendations about the village centers. The section of the Master Plan that deals with Sandy Spring village center does not have any specific recommendations for the property. It is shown for continuing the O-M zone, but there are no specific development guidelines or any specifics about the property. There are the recommendations though that the Master Plan has for the village center in its entirety. It does indicate keeping a lower density on the north side of 108, further to the east, reinforcing the eastern edge of the Sandy Spring village center. And, on page 31, it indicates applying a new rural village overlay zone to allow for additional flexibility in development while providing the option of design review. And, the village overlay zone does, in fact, require site plan review.

It also indicates to encourage development and revitalization of village centers. The Plan recommends that incentive property owners are an important part of revitalizing the center and

providing increases in commercial density is one way of encouraging redevelopment, but they need to be balanced with the intent to retain the small scale of the existing centers.

And in terms of the zoning pattern, there's about three and a half acres of commercial zoning on the north side of MD 108 and about 5.9 acres of commercial zoning on the south side of MD 108. So, the predominant amount of commercial zoning here is on the south side, over 60 percent is on the south side of MD 108. It indicates encouraging the traditional village design such as height limit compatible with the Sandy Spring historic district and building space and the main road, which by and large are two story and two and a half story buildings with the gable roofs and dormers on the third floor. The Plan encourages active fronts on buildings such as porches and street entrances.

Mr. Perrine noted that the Thomas Building is brought up to the street and the entrance from the street is toward the eastern side of the property. Technical Staff felt it more appropriate to have the entry located toward the center of the village center to make it closer to the more active part of the village center. And of course, there is a play area fronting on MD 108. There is the encouragement of land use mix of stores and houses by maintaining the existing mix of commercial and residential zoning in the village center. Applicant will add to that mix by providing for a school, and for a street entrance for the office building.

In Mr. Perrine's opinion, the Thomas building would be comparable scale to the two Montgomery Mutual buildings (Moore and Bentley), and in terms of height, two and a half stories, dormers, gabled roofs and other styles, brick, it would relate to the village center. The amount of surface parking would drop from 66 to 55, and much of the parking would be out of view. Of the 289 required spaces, eight are required for handicap.

Mr. Perrine introduced Exhibit 60, which contains two cross sections showing east and west elevations of the proposed structures. It illustrates the location of the Thomas Building and

the parking deck to the rear and the adjacent townhouses. Mr. Perrine does not believe that the parking structure would be very visible from Meetinghouse Road because of the distance (about 300 feet) and intervening plantings and plantings around the intervening dumpster enclosure. For people visualizing it to the extent that they see through the trees on the south end, they'd be looking at a nine foot wall -- a couple of feet of that would be open with cars about five feet below. In the southwest corner, at the edge under the play area, it is about twelve and a half feet all the way up to the top of the parapet. The northwest corner is about four feet out of the ground to the deck level and there will not be a parapet there. It's just a wrought iron fence that keeps kids from going off. On the west and the south, there will be a 25 foot strip of whatever trees remain, filled in with more planting that would be elaborated on at the time of site plan. If you come from MD 108, you enter into surface parking, which is at the same level. That's where the parents would go to drop off their children.

It will be 75 feet on the west from the northernmost townhouse to the parking structure itself, 85 to the proposed building. In the rear (*i.e.*, to the south), it is 55 feet from the townhouse to the rear of the parking structure. Mr. Perrine noted that a parking structure is not among the items precluded in the Overlay Zone. In Ashton, the Planning Board did approve a parking deck similar to this, an open parking deck in an area where there is a shopping center.

Mr. Perrine further testified that the C-T zone allows for 35 percent building coverage. The on-site buildings, including the three other existing buildings and the proposed Thomas Building, together provide for 16 percent building coverage. If instead of just the new Thomas Building, you included the entire parking structure, that percentage goes up to about 34 percent. But, in his opinion, building coverage is for buildings that people either live in, buy things in or offices or inhabited in some fashion, not for parking structures. Parking structures are also not included in calculations of FAR.

Mr. Perrine stated that the proposal comports with all the applicable development standards (C-T and Overlay Zones) and purpose clauses (O-M and Overlay Zones). Regarding the O-M Zone, the site is outside of the CBD area and a high intensity use is not appropriate. A moderately intense use office would not have an adverse impact, and the area is not intended for predominantly one-family residential use.

Here the building will be set back and broken into two sections. The western section, at two stories, is comparable to the townhouses to the west, and the two and a half story portion over toward the east is comparable to the commercial side of the property. There is also a landscape buffer. The basic circulation pattern allows cars to get over to Meetinghouse Road and out to MD 108 where there is a traffic signal. Access to the lower grade of the parking garage is not at the edge where there'd be noise and activity near residences. Those features create compatibility with the surrounding residential and commercial uses. The surrounding area is a collection of commercial uses, institutional uses as well as residential. It's not predominantly a one-family residential area, so the proposal conforms with the O-M purpose clause.

In terms of the Sandy Spring-Ashton village rural overlay zone, the purpose clause has two parts. One is to preserve and enhance the rural village character of Sandy Spring by ensuring attractive, traditional pattern of houses, commercial establishments, open spaces and the relationship to the roadways. The proposed building would face out onto MD 108 with an active front. There's no parking in front of the building, between the building and the street. The building is generally aligned with other buildings, the Sandy Spring Bank building and the Stabler Building.

In terms of setback, the proposed building will be divided into two sections, a two and a half story gable with dormer section. And, the section to the west will be one and three-quarter stories, with dormer and a gable section closer to the townhouses. Applicant has reduced the amount of surface parking, pushed the parking below grade as far as possible, and provided a play

area in the front. The storm water management area will be green above and the landscape area will provide open space between the proposed building and the adjacent residences. The pattern of building and open, building and open will continue.

The second part of the Overlay Zone purpose clause is to encourage compatible relationship between new or expanded houses and businesses, and traditional neighboring structures that reflect the best of local village character, particularly in terms of scale siting, design features and orientation on the site. The proposed building will be similar in scale to the two existing Montgomery Mutual Insurance buildings, the Moore and the Bentley buildings. They are connected by a two story walkway, and the Thomas building sections will also be connected. In his opinion, the new building will fit in to that rhythm of the existing buildings. The village character and design features, come at site plan when more of the architecture is refined, but it will comply.

[Applicant's attorney explained that Applicant had amended the schematic development plan amendment from the Planning Board hearing to introduce additional binding elements. They were then further revised based on discussions with Mr. Klauber and the community. She also indicated that she would check to see whether the C-T Zone development standards had changed since 1989, when the rezoning was approved. 11/21/08 Tr. 183-185.]

Mr. Perrine then recited the proposed binding elements, which included the four that the Planning Board had approved and the seven new ones Applicant proposes to add [all of which are contained in the revised SDPA (Exhibit 70) and in Exhibit 70(b)]. Three items that Applicant had intended to add to the binding elements were instead proposed as notes on the SDPA after consulting with the People's Counsel and community members. These items involved the use of dormers and the use of cultured stone and brick in the facades, which are details now left out of the binding elements to give more flexibility at Site Plan. [Applicant's attorney added that, if at

the end, the community preferred something other than cultured stone and brick and Applicant agreed to it, Applicant did not want to have them required in a development plan binding element.]

In terms of surrounding FARs (floor area ratios), Applicant produced Exhibit 61 to compare the subject site's proposed FAR of 0.42 with surrounding FARs. Mr. Perrine concluded that this .42 FAR fits into the general scheme of FARs in the surrounding area.

Mr. Perrine also produced a rendered blowup (Exhibit 62) of the insert map on page 76 of the 1998 Sandy Spring/Ashton Master Plan, showing the designated historic area and the subject site's boundaries. It demonstrates that the section of the site where the Thomas Building is proposed is outside of the Historic District. Mr. Perrine opined that the Historic Preservation Commission (HPC) does not have to review this matter because the new structures will not be in the Historic District. If you do work in a historic district you have to get a historic area work permit, but no work here will be done in a historic district. He stated that, based on his conversation with Technical Staff, he believed Technical Staff had inadvertently omitted the word "not" from the sentence in their report which seemed to indicate that review by the HPC was required.

Mr. Perrine further opined that the proposed development was in the public interest because providing a school in a centralized location close to the village center supports the revitalization of the village center. The local service office or retail, whatever will be on the first floor, and the offices on the second floor and third floor, would allow for not only additional places of employment, but would result in employees and people on the street during the daytime hours, helping to support some of the uses in the center of Sandy Spring. The project, as it's been worked through, is sensitive to the surrounding uses and the conditions that are there.

On cross-examination, Mr. Perrine stated that the only single-family houses nearby are back to the southeast. There are about four lots, but they're quite a distance and there's a tree stand. There are nearby townhouses, but they will be screened by trees. When this parking structure is there and some trees have been taken down, somebody walking down Meetinghouse Road may be able to see some of the structure. They would also see beyond that. There will be trees beyond the parking like there are now, a thinner band of trees but there will be trees at the far end of that deck. They'll only see the top of the trees, not the forest that they see now.

Applicant proposes to plant trees in the green area in between the upper deck drive and the lower deck drive, to screen the parking facility wall at that point. Mr. Perrine believes that from Meetinghouse Road, you will not be able to really see the opening to the lower garage level and will see little of the structure itself. Currently, it is about a football field and a half from Meetinghouse Road, looking west, to the nearest tree on the site. Also currently, the townhouses to the west and south look out on trees and then a parking lot with 66 spaces. Depending on how high the viewer is, he may see less of the cars after the deck and surrounding trees are installed, and there will be fewer surface parking spaces than presently exist. They will be at least 10 feet tall when planted.

As to the Master Plan guideline of providing lighting that is consistent with the area character, Mr. Perrine stated that the lighting will be in character, as determined at site plan. There will also be bicycle racks along the south side of the building adjacent to the parking.

Perrine Rebuttal Testimony (11/24/08 Tr. 72-114):

Mr. Perrine testified in rebuttal that the stormwater management facility had to be relocated to the western side of the site, underground, where it is shown on the revised SDPA because DPS so required. There will be no trees on top of it because the roots would get into the facility, but there will be a 25 foot wide wooded buffer between it and the townhouses to the west, and that

should be sufficient to provide adequate visual screening. The townhouses to the south are about 50 feet apart from each other, and they are 55 feet from the proposed parking structure. The townhouses are two story structures. At the rear southern edge of the parking structure the distance up to the top of the wall that would be on the parking deck is 9 feet. At the far western, southwestern corner that elevation is 12 feet.

Mr. Perrine explained how parking is typically handled for commercial properties above certain FARs. Generally, a one-story retail building at about .24, .25 FAR depends only on surface parking. At .35 FAR or more, there's got to be some other type of parking, structured parking of some sort to achieve that FAR density. It depends on the shape of the property and the setbacks. Mr. Perrine noted that the Rural Village Overlay Zone permits an FAR of up to 0.75, and therefore, in his opinion, the Overlay Zone contemplates that there will be a need for structured parking.

In Mr. Perrine's opinion, it would be very difficult to devise an alternative parking arrangement to what Applicant proposed without getting parking closer to MD 108. He also opined that, from a land planning perspective, there is nothing inherently unaesthetic or contrary to the rural village environment in the proposed parking structure which locates the majority of the parking below grade. Putting most of the parking below grade is superior to having more parking on the surface. Applicant has suppressed the lower level about as much as possible, and that sets what the upper level would be. Applicant addressed the upper level with screening and the architectural finish of the facade of the parking, the exposed part of the parking deck. About 75 percent of the parking on this western parcel would be below grade. Building lot coverage is at 16 percent. But even when you added in the entire parking structure, coverage would still less than the 35 percent limitation in the C-T Zone. Obviously a three or four-story parking structure above

grade starts to look out of place in a rural setting. However, if it's suppressed and has the right kind of façade, finish and screening, it can be part of a rural village setting.

Mr. Perrine also introduced Exhibit 77, an altered photo showing what the view of the parking structure would be from Meeting House Road, and Exhibit 77(a), showing the line of sight. The picture has been modified to show these evergreen trees such as are shown on the cross section that will be in front of the parking deck. So that white van is green, looks green in this picture now because it's been colored over in green. But that is about the location of where the face of the parking deck would be, and the top of the van is about the top of the wall of the proposed deck.

He concluded that, from Meeting House Road, the entrance to the parking structure would not be very visible. Some of the existing trees seen in the photo would have to be removed to construct the deck.

Mr. Perrine testified that the proposed structures and setbacks are comparable to the existing Moore Building, and Applicant has proposed binding elements more restrictive than the C-T Zone and additional architectural commitments to insure compatibility.

Mr. Perrine also added another reason it would be difficult to sink the lower parking level any lower than is currently planned – to do so would lower the stormwater drainage below the level where it could drain by gravity into the other storm drain systems that are in place. For the same reason, the stormwater management facility could not be put under the garage. Using a pump would require a backup generator, which creates noise.

According to Mr. Perrine, the Rural Village Overlay Zone site plan requirement differs from the normal site plan in that the Planning Board also is directed to evaluate roof lines, facades, and finish materials, and those things are not listed in the normal Section 59-B-3 site plan. There's a special site plan that's followed for a Rural Village Overlay Zone. Compatibility is not just the

block of the building, but also the roof line itself, facade and finish materials. The Planning Board does get into the details in the site plan review process for the Rural Village Overlay Zone.

As to the railing on top of part of the deck, it will be five and a half feet above the deck level. There is a fence behind the townhouses on the west side of the parking garage. That fence, at its closest point, is about 57 feet from the parking garage. On the south side of the site, it's about 37 feet to the fence north of the southern townhouses. It's 167 feet from the west townhouses over to where the cars would be parked.

4. James Hendricks (11/21/08 Tr. 118-133):

James Hendricks testified as an expert in civil engineering. He prepared a topographic survey for verification of the boundaries of the property and a natural resource inventory/forestation delineation plan. He also prepared a schematic site plan showing proposed grading and the proposed location of buildings, parking and utilities, a preliminary forest conservation plan and a storm water concept plan.

Mr. Hendricks described the property as having a high point located along the northern property line and then sloping from there to the southwest at about 4 percent and to the southeast at about 3 percent. There's an existing storm water management facility located in the southeast corner of the property. The area for proposed construction is on the western portion of the property and consists of an existing parking lot and a small wooded area.

Mr. Hendricks testified that storm water management is comprised of three different elements – quality control, quantity control and ground water recharge. Quality control will be provided by having a green roof on the building and two underground structural filtering devices. Quantity control is going to be handled in an underground piping system with the water held in array of 48-inch diameter pipes. Ground water recharge is not necessarily on the site as it is a

redevelopment site and Montgomery County does not require that. There is an approved storm water concept.

Applicant originally proposed providing storm water management for the proposed development in the existing storm water facility that's located in the southeast corner of the lot, but the County disapproved that because the site drains in two different directions. Because the facility had to be relocated, it will mean the loss of some trees. Sediment control will be provided during the construction of the property. It will be combined using earth dikes that will direct sediment-laden water to sediment traps where the sediment will be filtered out and there will also be silt fence surrounding certain portions of the site to also provide filtration of the sediment-laden runoff.

Mr. Hendricks further testified that the preliminary forest conservation plan had been approved. Applicant is proposing .19 acres of tree plantings on site and it is purchasing 1.27 acres of an off-site forest to meet forest conservation requirements.

In Mr. Hendricks' opinion, the proposed schematic development plan amendment will not overburden public facilities or adversely impact the surrounding area from a civil engineering standpoint. There are adequate electric, telephone, water and sewer utilities in the area to support this development proposal.

When asked by the Hearing Examiner whether there is any reason from an engineering standpoint why the proposed garage couldn't be sunk another six to ten feet into the ground to eliminate all or almost all of its above ground portion so you'd still have the surface level and one level down, Mr. Hendricks relied that the grade on the driveway would have to slope dramatically down to get it down further, and it looks like it would be steeper than he can make it.

5. Alan Meyers (11/21/08 Tr. 224-235):

Alan Meyers testified as an expert in architecture. He stated that the project was in compliance with the C-T Zone and Overlay Zone development standards. He further testified that

the main portion of the building, the 165 feet portion along MD 108 is a two and a half story building. It's got a rather traditional pitched roof on it. The portion that is an L-shape off of that, which is 50 feet off the street and 33 feet off of the face of the major portion of the building, has been lowered that to a one and three-quarter story building, with the same kind of a pitched roof. He has not gotten into the design of the dormers or the windows yet, but they will be in a traditional form related to the nature of the village center.

According to Mr. Meyers, if the parking were all lowered, it would be very difficult to bring the children into the school building. If only the lower level were completely underground, you'd have very significant retaining walls all the way around it, and that would be a considerable cost, perhaps another 25 percent of the cost of the parking lot. Were you to obscure the parking completely below ground and put a deck on top, you then have all the problems of evacuating the air out of that area. That requires big exhaust shafts, which are not particularly desirable environmentally in this area. It would also be very, very difficult from a grading standpoint and possibly dangerous. His expert opinion is that it's not practical or practicable to have the lower level any lower than it is now in the planned garage.

When asked by the Hearing Examiner about the architectural compatibility of the garage front, the visible garage front or sides with the adjacent to the historical district, Mr. Meyers stated that the garage would be so sunken under the building and so obscured by landscaping and grades down through here that there's not going to be a whole lot of it to be seen. Moreover, it will have a wall that stands two and a half feet high above the deck, which will obscure the headlights. The vista from Meetinghouse Road will be very minimal and mostly obscured.

Also, in Mr. Meyers' opinion, the final design of the Thomas building can be made to be compatible with the historic district adjacent to it. This proposal in mass is very similar to Mr. Booz's proposal.

6. Craig Hedberg (11/24/08 Tr. 17-43):

Craig Hedberg testified as an expert in transportation planning and traffic engineering. He stated that Park and Planning staff identified which locations he should analyze with regard to traffic, and they consisted of three external intersections -- Maryland 108 at Norwood Road; Maryland 108 at Brooke Road-Meeting House Road; and Maryland 108 at New Hampshire Avenue (MD 650). He took traffic data at those locations where data was not current and completed his traffic study in September of 2008 (Exhibit 36(f)). He supplemented that study on October 17, 2008 (Exhibit 36(g)), after the maximum proposed density of the Thomas Building was reduced from 40,000 square feet to 35,000 square feet. Mr. Hedberg testified that the reduced density resulted in a lower level of projected site traffic.

The intersections that were analyzed fall within two different policy areas, the Maryland 108 -Norwood Road and the Maryland 108- Brooke Road-Meeting House Road intersections fall within the Olney Policy Area standard and the intersections to the east, including Maryland 650-Maryland 108 fall within the Rural Patuxent Policy Area. The difference is that the acceptable congestion standard for the Olney Policy Area is a critical lane volume (CLV) of 1450 whereas in the Rural Patuxent Policy Area it's 1350.

Mr. Hedberg found that, under existing conditions, all intersections operated within their respective applicable policy area standard. Under the background conditions (*i.e.*, when development in the pipeline is factored in), the intersection of Maryland 108 and Maryland 650 does exceed the congestion standard for the Patuxent Rural Policy Area. So that was the location for which improvements were identified in the study. They are improvements that have been worked out with the State Highway Administration and have been paid conditions of approval of several developments in the Ashton-Sandy Spring area to participate either publicly with the state

or ultimately to fund on their own. These improvements would have to take place in order for the subject project to go forward.

According to Mr. Hedberg, these improvements will reduce the CLV at the one intersection projected to fail when pipeline developments are completed to the point where it will be within the 1350 CLV standard. It will also be low enough that the projected traffic from the subject application will not drive it over the 1350 CLV standard. In his supplemental memorandum (Exhibit 36(g)), it shows that the intersection, under the background condition in the p.m., operates at 1382 CLV. With all these developments plus the subject site with the improvements (*i.e.*, total traffic conditions), the critical lane volume improves to 1226 CLV, which is more than a 100 units below the adopted congestion standard.

The proposed development will produce 213 peak hour trips in the a.m. peak hour. However, of that 213 only 96 are new trips that would be generated specifically for the purpose of either coming to the office or coming to the school. Some of the trips are pass-by trips, which just turn in, drop the child off and then proceed on to their destination. Others are diverted trips which modify their travel paths, drop their child off, and come out heading to their end destination.

The proposed development will produce 197 peak hour trips in the p.m. peak hour. However, of that 197 only 88²⁰ are new trips that would be generated specifically for the purpose of either coming to the office or coming to the school. Because of the reduction in the office density, the primary trips, which are the main ones that impact the external intersections, were reduced by about 10 trips in the a.m. and the p.m. peak hour.

Mr. Hedberg further testified that the other element of the traffic study is this Policy Area Mobility Review (PAMR). This application was filed prior to July 1 of 2008 and the subject site sits within the Rural Patuxent Policy Area, which at that time had a 5 percent trip mitigation

²⁰ The Hearing Examiner notes that it appears that Mr. Hedberg misspoke, because his supplemental report (Exhibit 36(g), pp. 2 & 6) shows 98 primary p.m. peak hour trips, not 88.

requirement and that mitigation requirement percentage is applied against the number of new trips. He identified some mitigation measures here that have a trip equivalency to this 5 percent, such as additional feet of sidewalk and handicap ramps. However, according to Mr. Hedberg, under the modified PAMR percentages currently in effect, there is no mitigation required in this policy area, so at subdivision no mitigation measures will be required to satisfy PAMR. [The Hearing Examiner indicated that he would take official notice of the LATR guidelines.]

Mr. Hedberg stated that based on a previous study and actual measurements at other Goddard sites, he concluded that a total of 55 parking spaces on the upper level should be more than adequate to avoid queuing at the school. Applicant will have the staff park on the lower level, so even using that broad figure, that would be 35 spaces. But these people are arriving from 7:00 in the morning until 9:30 in the morning, and there won't be a lot of office trips that are coming in at that time. The details will worked out in a plan. He is very comfortable that there will be more than enough parking spaces. His opinion is that there will not be any queuing away from the site as a result of this present proposed parking setup.

[Following Mr. Hedberg's testimony, Applicant's counsel introduced DPS's approval of the stormwater Management Concept Plan (Exhibit 69); a revised SDPA (Exhibit 70); the revised and executed covenants (Exhibit 71); a printout of the current C-T Zone standards (Exhibit 72); and a printout of the 1989 C-T Zone standards (Exhibit 73).]

B. People's Counsel

Martin Klauber, the People's Counsel, participated but did not call any witnesses. He indicated that the Planning Board, at Site Plan review, would require a community liaison council and a transportation management plan. 11/21/08 Tr. 14.

Mr. Klauber stated that the main question in this case is whether the addition of the proposed building in the schematic development plan will be compatible with the surrounding area where the

subject site is located. Mr. Klauber noted that very important issues in this case will be reviewed at site plan and subdivision. He concluded that “a prima facie case has been made for compatibility,” and he recommended approval of the SDPA. 11/24/08 Tr. 121-123.

Mr. Klauber argued strenuously against review by the HPC prior to subdivision and site plan because the details to be reviewed have not yet been determined. He agreed with there being a condition in the Council Resolution requiring that the matter be submitted to the HPC in conjunction with subdivision and site plan review to let that body determine its own jurisdiction in this case. If it concludes that HPC should review the matter, then HPC would have the opportunity to do so at that time. 1/13/09 Tr. 33-34.

C. Community Witnesses

1. Michelle Layton, on behalf of SSARPC (11/21/08 Tr. 89-102; 11/24/08 Tr. 123-125; 1/13/09 Tr. 35-38):

Michelle Layton testified that she lives at 17905 Ednor View Terrace in Ashton, and she was appearing on behalf of the Sandy Spring-Ashton Rural Preservation Consortium (SSARPC), which she co-chairs. Her home is about two miles from the Ashton village center and about three miles from the Sandy Spring village center.

SSARPC is a volunteer group whose mission is to support development in Ashton and Sandy Spring that conforms to the 1998 Ashton-Sandy Spring Master Plan in order to preserve the historic rural village of Ashton and Sandy Spring. SSARPC is pro-master plan and not anti-development. Ms. Layton introduced Exhibit 53, which contains SSARPC’s testimony.

Ms. Layton testified that SSARPC would prefer to see a smaller footprint of the proposed Thomas Building, which sits at the edge of the historic district and at the entryway for the village of Sandy Spring, but it is their belief that the recommendations made by the Planning Board for binding elements to limit the building’s size are “a good start.” 11/21/08 Tr. 91.

SSARPC would like to see a reduction in the parking and more open space. Ms. Layton echoed concerns raised by some Planning Board members about the buildings mass in this rural village setting.

Ms. Layton's testimony largely addressed the Applicant's plan prior to its agreement to accept the Planning Board's recommended maximums. When asked by the Hearing Examiner to address what the Applicant is now seeking, which is what the Planning Board has recommended, a maximum of 35,000 square feet and a maximum of a two and a half story building, Ms. Layton replied, "So, yes, we would like to see you approve that as the maximum." 11/21/08 Tr. 99. Nevertheless, she indicated that SSARPC would like to see the building reduced in size. "We do believe it's too big, too tall, too long." 11/21/08 Tr. 98.

At least as to Applicant's pre-Planning Board plans, Ms. Layton opined that the Thomas Building would be out of character with Sandy Spring in terms of the size and massing of the buildings, as is the parking deck with its 296 spaces, which would almost quadruple the amount of parking currently in the Sandy Spring village. In addition to the size and massing of the building, SSARPC believes that the proposed plan for the Thomas Building is not consistent with the rural overlay zone because it does not meet the purpose clause of the zone; nor is the plan in conformance with the 1998 Sandy Spring-Ashton Master Plan, including the design guidelines noted for the entryway to Sandy Spring. And, it is not compatible to the buildings around it.

Ms. Layton stated that the proposed plan does not ensure the right pattern. The buildings are too massive and do not fit into the traditional existing architecture. In no way does a three story building with a parking structure that runs the entire underground of the site meet the existing pattern. Shoe-horning a parking garage in the middle of downtown Sandy Spring definitely does not preserve and enhance rural village character. Businesses and buildings are small in Sandy Spring. Even the two houses directly across from the site of the proposed Thomas Building exhibit

rural village character and are neighboring structures. Small, quaint and with front porches, both are for sale to be used as commercial property. A comparison could be made between the size of the Moore and Bentley Building and the proposed Thomas Building, but those are two separate buildings and are not at the entryway of this village, nor can one see them from the road. One must actually turn on to Meetinghouse Road to see the size and architecture of those buildings. Therefore, while those buildings do seem to set a standard size and design, they do not sit at the entryway of Sandy Spring which has its own guidelines in the Master Plan.

Ms. Layton disagreed with Technical Staff's conclusion that the Thomas Building is in compliance with the Master Plan. The Thomas Building will be the first building that people come upon when entering the village of Sandy Spring. It's exactly at the west entryway. SSARPC believes it establishes the opposite character of what is described in the Master Plan, too tall, too massive, too much on too little space.

SSARPC recognizes that the tenant, the Goddard School, and its requirement to run efficiently have determined the footprint for this building. SSARPC welcomes them to the area, but feels that the mass and scale of this building can be reduced while still honoring their needs.

"It is the hope of the SSARPC that the result of this hearing will be to uphold or reduce the four binding elements recommended by the Planning Board regarding the development review plan amendment for the Thomas Building." 11/21/08 Tr. 96-97. Ms. Layton indicated that SSARPC believes that the maximums set by the Planning Board would still allow too large a building, but she was unable to state what the appropriate maximums should be.

Ms. Layton testified at the final day of hearing as to SSARPC's position that review by the HPC was required in this case, and asked that the Hearing Examiner recommend to the Council that such a review be held at site plan review and subdivision. 1/13/09 Tr. 37-38.

2. Miche Booz on behalf of SSARPC (11/21/08 Tr. 73-88):

Miche Booz testified that he lives in Brookeville at 208 Market Street, and that he is a longtime member of the community, appearing on behalf of the SSARPC. Mr. Booz is an architect, who has worked on numerous historic buildings in the Sandy Spring-Olney-Brookeville area, probably numbering 20, and he has won historic preservation awards. Based on his credentials, he testified as an expert in architecture.

He introduced Exhibit 52, an eight-page document with a series of historical photos and then a diagram at the end. He described Sandy Spring as a special place, which is an overlay zone to preserve the character and historic setting in Sandy Spring. The proposed building's massing, detailing and location on the site are very important. Mr. Booz explained that the purpose of the Photographs in Exhibit 52 is to identify the site and to clarify and put it in historic context as an important gateway site to the village of Sandy Spring. The proposed building will be the first building one would see entering the historic area.

Though Mr. Booz did not see this building as being unusual in terms of its footprint, the devil is in the details and the footprint certainly doesn't tell the whole story. Because the plans have been revised and no new elevations submitted, Mr. Booz indicated that he could not tell what this building is going to look like once it comes out of the ground. He did water color images (Exhibit 52, p. 8) attempting to capture the overriding characteristics SSARPC would like to see in the proposed building to match the pattern set by the other buildings in the area. If developed incorrectly, it will cause some real harm to this village context. Mr. Booz feels quite strongly that the shape, height, the dispositions of the two masses (*i.e.*, the two segments of the Thomas building) must actually be designed to appear as two separate buildings, even though they're going to be connected with a two story connection. He hoped that the developer would work with SSARPC to come up with a compatible, contextual, appropriate design for this site.

When asked by the Hearing Examiner whether he accepted the Planning Board's recommendation of a maximum of a 30 foot tall building, two and a half stories in height and with a maximum floor area of 35,000 square feet, Mr. Booz testified that he did not have a problem with the footprint, *per se*, but he and SSARPC would be happier with a building that was closer to 30,000 square feet, designed to be similar to his field sketches in Exhibit 52. He did not object to the plan insofar as the binding elements suggested by the Planning Board; it's only these matters of architecture and design.

3. Alan Wright (11/21/08 Tr. 102-116; 1/13/09 Tr. 42-50; 56-58.):

Alan Wright testified that he lives at 17710 Meetinghouse Road in Sandy Spring. He introduced a statement of his testimony as Exhibit 54. Mr. Wright has been a resident since 1984 at the above address, which is separated from the property in question by the Sandy Spring meeting property.

Mr. Wright indicated that he has seen many changes in Sandy Spring including the construction of the Montgomery Mutual Insurance Company office building on this site, which is the Moore and Bentley buildings. He described those buildings as large but "classy" and well situated on the site. 11/21/08 Tr. 104. They are surrounded by lawn and landscaping, back from the road with open space and views through the property. Mr. Wright described the new proposal as "clearly a case of overdevelopment on a very small site driven by the economics of the project without thought for the fitting into the surrounding community." 11/21/08 Tr. 106. According to Mr. Wright, in order to fit this building into this small area of the property, the developer has to build a parking garage to provide the extra parking. Because the parking garage is expensive, he proposes to add two stories of office space to the building to spread the cost of the garage among additional tenants.

Mr. Wright characterized the proposal as “a cityscape with border to border construction. The view from either side, from the west or the east, will be monolithic.” 11/21/08 Tr. 107. He suggested that a smaller building would require a reduced amount of parking which could very well be completely underground just as a portion of the proposed parking is proposed to be underneath the playground. In his opinion, “the parking garage is not a feature that anyone would associate with a rural village” and is not consistent with the Sandy Spring-Ashton rural village overlay zone and the Master Plan. It is at the entryway to Sandy Spring and adjacent to the most historic part of town, adjacent to the friends meeting property. 11/21/08 Tr. 107.

Mr. Wright disagreed with Technical Staff, and would like to see a building limited to 30,000 square feet of floor space, with no parking garage, which he felt could never be compatible with the historic area. Even though the facility would be mostly underground, at the back of the parcel, it is at six feet on one corner or ten feet on the other corner, and that doesn't include the railing or the protective wall that's going to be another three feet or so, and there's going to be lighting on top. And, then when you have the facility actually in use, there are going to be cars up there in the air. Mr. Wright does not believe that looks rural or historic in any way. And, the other problem with this proposed garage is that between it and the proposed building, it occupies from the very front of the site within a few feet to the very back of the site within a few feet. So, when you look at this site from the side from either the east or the west, you see nothing but construction. You don't see anything through. That begins to look more like a city block than any kind of a rural view.

Mr. Wright testified on the final hearing day that HPC review was needed and should take place prior to review by the Council. His concern is that once the Council approves the SDPA, the HPC will be reluctant to make changes such as eliminating any portion of the parking facility

structure that protrudes above ground because the HPC will view the development as having been approved except for details. 1/13/09 Tr. 43-50; 56-58.

4. Jennifer Fajman (11/24/08 Tr. 53-56; 1/13/09 Tr. 41-42):

Jennifer Fajman testified that she lives at 17922 Pond Road in Ashton, Maryland, and she introduced written testimony as Exhibit 74. She has lived in Ashton for 20 years and resides about three miles from the proposed Thomas Building. She is a member of the SSARPC Steering Committee, but these comments are her own.

Ms. Fajman is concerned about environment and master plan issues, especially the impact that the Thomas Building development will have on the trees and other natural vegetation currently on this site. She noted that the Sandy Spring-Ashton Master Plan, page 67 says, “Preserve trees as part of the rural character. Where trees or hedgerows occur along roads or property boundaries, a high priority should be given to maintain the wooded character and preserve[ing] existing trees.” Also page 32 of the Master Plan talks about recommendations for maintaining a small scale says, “Create small parking areas that are well-landscaped, preserved trees” 11/24/08 Tr. 54.

Ms. Fajman urged that the off-site planting of trees proposed in the preliminary forest conservation plan does nothing to meet the Master Plan requirement for preserving trees and other vegetation. While she understands that the change in the location of the storm water management system is the reason for removing the forest, the Applicant is not planning to replace the forest on the site. Retaining trees is a priority in the Master Plan, and aids in maintaining the rural atmosphere. Ms. Fajman believes that the environment and rural entryway to Sandy Spring should not be compromised by approving the proposed development plan amendment as written. She encouraged the Applicant to think of other ways of doing storm water management that will preserve the existing forest and associated vegetation.

On the final day of the hearing, Ms. Fajman testified that HPC review was needed in this case because of the proximity of the proposed buildings to the historic district. 1/13/09 Tr. 41-42.

5. Jim Castagna (11/24/08 Tr. 56-67):

Jim Castagna testified that he lives at 1045 Windrush Lane, Sandy Spring, in the townhouse complex adjacent to the subject site. He is the president of Sandy Spring Village Condominium Association, but his testimony was on his own behalf because the Association did not go through any formality to establish its views, and he did not file any document in advance of the hearing indicating he would be testifying for a condominium association.

Mr. Castagna testified that his community borders this property directly south and west, and it is the most directly affected and adversely affected by this plan. He feels that the Applicant will make money and the County will get taxes, and the townhouse residents “will be the victims.” 11/24/08 Tr. 58. He believes that property values are going to plummet under the current plan, as well as the peace and tranquility of his neighborhood. He feels as though the Thomas building is too big for Sandy Spring. In the Master Plan, every other word is “rural,” rural villages, rural tranquility, rural roads. He stated that this is a building that belongs in Rockville more than it does in Sandy Spring.

Mr. Castagna feels that the parking garage will affect his neighborhood even more than the Thomas building. The parking garage is going to be approximately 8 yards from the townhouse fences. It's going to be 14 feet high at the highest point, and it's going to be above the townhouse fence lines, so residents looking out of their windows will see cars and children playing in the playground, which will hurt our property values.

Mr. Castagna felt that the changes in the plans for the Thomas building were discussed with everyone but the townhouse residents, and yet they will be the ones to be directly affected. He also objected to the change in the stormwater management system, because it will cause the

water to flow in the direction of the townhouses, which already have a tremendous flooding problem, and also results in the loss of the majority of their woods. While Mr. Castagna does not oppose the school, *per se*, he feels that the proposed building needs to be downsized to the point that the parking lot stays ground level, like it is now.

On cross-examination, Mr. Castagna admitted that the developers had met with members of the townhouse community, but the plans changed and he felt that they were not consulted sufficiently regarding the changes.

Mr. Castagna realizes that a 25 foot tree buffer will remain on the west, but most of the remaining trees will be smaller ones which do not offer as much screening. He indicated that the tree line along the southern property line is “already fairly bare. The woods are basically on the west side.” 11/24/08 Tr. 65.

6. Kathy Virkus (11/24/08 Tr. 67-71; 1/13/09 Tr. 38-39.):

Katherine Virkus testified that she lives at 1047 Windrush Lane in Sandy Spring, Maryland, and she has been a resident of Sandy Spring Village for 21 years. A written version of her testimony was submitted as Exhibit 76. Ms. Virkus stated that Sandy Spring Village is a small enclave of 39 town homes which abuts the site that is being addressed today. She purchased her home almost entirely because of the environment of the historic Sandy Spring community and the residents' commitment to keeping Sandy Spring as a rural village.

Ms. Virkus feels that her community will be greatly impacted by the massive building and the massive two-level parking garage. She does not oppose there being a school; the problem is the size of the project and the removal of trees. The area will be changed from a sleepy community surrounded by large trees to a community which will be overwhelmed by the size of this project and will encroach on the peace and tranquility it now enjoys. The building, as well as a two-level parking lot, will occupy most of the available site. The southwest corner of the parking

garage will be just steps from one of the homes and will be 12 feet above grade, or possibly 14. Most of the older trees which provide an excellent buffer from the commercial area of Sandy Spring and also protect the community from street noise and air pollution will be removed and reforestation will take place off site.

In Ms. Virkus's opinion, this project is in contradiction to the purpose of the Sandy Spring-Ashton Master Plan, as laid out on page 6, under Environment. That goal is to conserve and protect natural resources, to provide a healthy and beautiful environment for present and future generations, manage the impact of the human activity on our natural resources in a balanced manner to sustain human, plant, and animal life.

Ms. Virkus looked at two nearby daycare facilities located in Olney. One is located at the corner of Gelding Lane and Route 108 and another located in Hallowell Subdivision. Both of these daycare facilities fit well into the surrounding communities with a minimal amount of parking. She feels that the mass of the Thomas building along with the mass of the two-level parking garage will have a negative impact on the quality of life for the residents of Sandy Spring Village and for all the residents of Greater Sandy Spring. Ms. Virkus noted that Page 1 of the Sandy Spring-Ashton Master Plan states the plan continues the 1980 Plan's emphasis on maintaining the aesthetic qualities and rural character of Sandy Spring-Ashton.

On the final day of the hearing, Ms. Virkus testified that HPC review was needed in this case. 1/13/09 Tr. 38-39.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term "Euclidean" zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365

(1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building heights.

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development, as required by the case law, *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1967). Any zone must also be consistent with a coordinated and systematic development of the regional district and in the public interest, as required by the *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110*.

These are the standards that were applied in 1989 when the subject site was rezoned to the O-M floating zone; however, binding elements established additional requirements at that time, including compliance with the more restrictive C-T Zone development standards and other limitations. The Schematic Development Plan Amendment proposed now must be evaluated under these same standards, plus those of the Sandy Spring/Ashton Rural Village Overlay Zone (SSRVO Zone) and the additional and modified binding elements, discussed in Part III of this report.

The O-M Zone contains a post-zoning review process that generally delegates to the Planning Board the details of site specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening. We turn now to the three areas of Council review discussed above, the purposes and requirements of the applicable zones, compatibility with land uses in the surrounding area, and relationship to the public interest.

A. The Purpose Clauses and the Zones' Requirements

Purpose Clause of the O-M Zone

The purpose clause for the O-M Zone, Zoning Ordinance §59-C-4.310, provides:

It is the purpose of the O-M zone to provide locations for moderate-intensity office buildings in areas outside of central business districts. It is intended that the O-M zone be located in areas where high-intensity uses are not appropriate, but where moderate intensity office buildings will not have an adverse impact on the adjoining neighborhood. This zone is not intended for use in areas which are predominantly one-family residential in character.

The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses and, in itself, shall not be sufficient to require the granting of any application.

The first and second criteria are clearly met in this case because the subject site is located outside of a central business district and is in a residential/light commercial area where high intensity uses would not be appropriate. As to the third criterion, Applicant's land planner, Phil Perrine, noted that the area is not intended for predominantly one-family residential use, and he opined that the proposed moderately intense office use would not have an adverse impact. 11/21/08 Tr. 177-178. Mr. Perrine based his opinion on a number of factors:

The surrounding area is a collection of commercial and institutional uses, as well as residential uses. It is not predominantly a one-family residential area. Moreover, the proposed Thomas building will be set back and broken into two sections. The western section, at two stories, is comparable in height to the townhouses to the west, and the two and a half story portion, over toward the east, is comparable to the commercial development on that side of the property. There is also a landscape buffer. The basic circulation pattern allows cars to get over to Meetinghouse Road and out to MD 108, where there is a traffic signal. Access to the lower grade of the parking garage is not at the edge where there would be noise and activity near residences. Those features create compatibility with the surrounding residential and commercial uses.

Technical Staff agreed that the proposed development would be compatible with its surroundings, and noted:

. . . By limiting the development to the standards of the C-T zone, which are more restrictive than the Development Standards of the O-M zone and overlay zone, the schematic development plan proposes an overall design that would be compatible with existing improvements on the property and nearby development, and in keeping with the character of the surrounding area.

It must be remembered that the subject site is already in the O-M Zone, and three commercial buildings already exist on the site. The newly proposed Thomas Building will not fundamentally change the impact of site development upon surrounding uses, if its final design is determined at site plan review with compatibility in mind. Based on this record, the Hearing Examiner finds that the proposal conforms with the O-M Zone's purpose clause.

Purpose Clause of the Sandy Spring/Ashton Rural Village Overlay Zone

The purpose clause for the Sandy Spring/Ashton Rural Village Overlay Zone, Zoning Ordinance §59-C-18.181, provides:

It is the purpose of this overlay zone to:

(a) *Preserve and enhance the rural village character of the Sandy Spring and Ashton village centers by ensuring an attractive and traditional pattern of houses, commercial establishments, open spaces and their relationship to roadways.*

(b) *Encourage a compatible relationship between new or expanded houses or businesses and traditional neighboring structures that reflects the best of local village character, particularly in terms of scale, siting, design features, and orientation on the site.*

Mr. Perrine opined that the proposed development would be consistent with the purpose clause of the SSRVO Zone for a number of reasons. 11/21/08 Tr. 178-179. The proposed building would face out onto MD 108, with an active front, and with no parking between the building and the street. It will be generally aligned with other buildings, the Sandy Spring Bank building and the Stabler Building. It will also be divided into two sections, a two and a half story section with a gable

and a dormer, and a smaller section to the west, with dormer and gable, closer to the townhouses. Applicant has reduced the amount of surface parking, pushed the parking below grade as far as possible, and provided a play area in the front of the building. The storm water management area will be green above, and the landscape area will provide open space between the proposed building and the adjacent townhouses. The pattern of buildings and open spaces will continue.

As to the second part of the Overlay Zone's purpose clause, the proposed building will be similar in scale to the two existing Montgomery Mutual Insurance buildings, the Moore and Bentley buildings. They are connected by a two-story walkway, and the Thomas Building's sections will also be connected. In Mr. Perrine's opinion, the new building will fit into the rhythm of the existing buildings. The village character and design features will come at site plan, when more of the architecture is refined.

Technical Staff noted that (Exhibit 38, p. 13):

The schematic development plan does not propose a substantial change in the existing pedestrian and vehicular circulation pattern. Ingress and Egress to the property is from MD-108 via the existing shared driveway (with the adjacent Sandy Spring Bank) and another existing driveway accessed from Meeting House Road. Transportation Planning staff found the traffic circulation pattern is generally acceptable.

Technical Staff and the Planning Board agree that a moderate-intensity office/school building will not have an adverse impact on the adjoining neighborhood, especially given the limits on intensity of the use contained in the Binding Elements. Staff concluded that "the proposed project would be consistent with the design characteristics of the existing developments within the Sandy Spring Historic District and the Rural Village Overlay zone in terms of massing, architecture, and height of the proposed building." Exhibit 38, p. 13.

The Opposition clearly disagreed with much of this assessment, and their arguments have been addressed at length in Part III.E. of this report, regarding Master Plan compliance, compatibility and historic preservation.

The Hearing Examiner finds that there will be no adverse impact upon the adjoining uses because the intensity of the use will be strictly limited by the binding elements and site plan review. In sum, the proposed rezoning will satisfy the requirements of the applicable purpose clauses.²¹

Development Standards

The development standards for the C-T, O-M and SSRVO Zone were set forth by Technical Staff in a Table on page 16 of their report:²⁴

Current Development Standards	Required			Proposed
	C-T Zone	O-M Zone	SSRVO	
	59-C-4.30	59-C-4.31	59-C-18.18	
Maximum Building Height	35 FT	60 FT	30 FT²²	30 FT
Minimum Lot Frontage	100			410 FT
Maximum Floor Area	0.5	1.5	0.75	.42
Minimum Building Setback:				
❖ Front Setback (MD 108)	10 FT	15 FT		17 FT (Bldg), 15.5 FT (Garage)
❖ Front Setback (Meeting House RD.)	10 FT	15 FT		1.5 FT (existing -1904)
❖ Side Setback (RT-10 residential property)	20 FT	1 FT/ 3FT of height		64 FT bldg., 55 FT (garage)
❖ Rear Setback	15 FT			91 FT (existing-1989)
Parking Setback				
❖ Front Setback (MD 108)	10 FT			100 FT
❖ Front Setback (Meeting House RD.)	10 FT			39 FT
❖ Side Setback (RT-10 residential property)	20 FT			11 FT (existing)²³
❖ Rear Setback (RE-2)	17 FT			20 FT
Maximum Building Coverage	35%, 73,847 SF	60%		16.1 %, 34,008 SF (19,204 SF existing, 14,804 proposed)
Minimum Green area	10% or 21,099 SF	10%		53% or 113,000 SF

²¹ Although the development standards of the C-T Zone were adopted into the binding elements because they are more restrictive than the O-M development standards, the purpose clauses of the actual zones in which the site is located, the O-M and SSRVO Zones, are the governing purpose clauses, not the C-T Zone's purpose clause, which is not adopted in the binding elements.

²² It is 30 feet if approved by the Planning Board at Site Plan; otherwise it is limited to 24 feet. §59-C-18.182(b)(2)(A).

²³ These parking setbacks include all parking on the site, not just the new parking facility. In addition, Binding Element #11 requires that the new parking structure be set back a minimum of 25 feet from the southern property line and 50 feet from the western property line.

²⁴ Some items have been corrected by the Hearing Examiner to conform to the evidence and the Zoning Ordinance.

The Binding Elements restrict building height to 30 feet, although a 60 foot height is permitted in the O-M Zone and a 35 foot height is permitted in the C-T Zone.²⁵ The Binding Elements also restrict floor area of the Thomas Building to 35,000 square feet, resulting in a total building coverage on the whole site of about 16.1%, although a building coverage of 60% is permitted in the O-M Zone and 35% in the C-T Zone.²⁶ Similarly, the floor area ratio (FAR) of the site will be about 0.42, though a FAR of 1.5 is permitted in the O-M Zone, 0.5 is permitted in the C-T Zone and 0.75 is permitted in the SSRVO Zone. The binding elements, as set forth on page 22 of this report, also restrict many other aspects of the proposed development.

As is evident, the application meets all the specific requirements of the applicable Zones, except for one pre-existing parking setback, which is not in the area of the site where the development is proposed and will not be affected by it. As noted by Applicant in response to Mr. Wright's strenuous opposition to a garage being located in this area, the SSRVO Zone contains a very specific list in Zoning Ordinance §59-C-18.182(b)(1) of those uses which are not permitted in the Overlay Zone. That list of prohibited uses does not include a parking facility or garage. That section also specifies that except for those uses listed as prohibited, *"[a]ll permitted or special exception uses allowed in the underlying zones are allowed in the commercial portion of the overlay zone."* Thus, a parking facility use is not *per se* prohibited, and may be allowed if it can be designed to be compatible.

Moreover, as alluded to previously in this report, the proposed development will require a later approval of a site plan by the Montgomery County Planning Board, in accordance with Chapter 59-D-3 of the Zoning Ordinance. The SSRVO Zone contains very explicit instructions to the Planning Board regarding its site plan review.

²⁵ The SSRVO Zone permits a height of 30 feet if the Planning Board, at site plan review, finds that the additional height is compatible with the adjoining uses and consistent with the intent of the Master Plan. Otherwise, height is limited to 24 feet. Zoning Ordinance §59-C-18.182(b)(2)(A).

²⁶ The SSRVO Zone does not limit building coverage.

Under Zoning Ordinance §59-C-18.184, “[i]n the course of site plan approval, the Planning Board must make a finding as to whether or not the proposed development substantially conforms with the design guidelines for new development contained in the approved and adopted Sandy Spring/Ashton Master Plan.”

Pursuant to §59-C-18.186:

The procedures for Planning Board approval under Section 59-D-3.4 are modified for this overlay zone to require the following additional findings:

- (a) The site plan is consistent with the recommendations in the approved and adopted Sandy Spring/Ashton Master Plan;*
- (b) The site plan meets all of the requirements of this overlay zone as well as the applicable requirements of the underlying zone; and*
- (c) Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

Based on the entire record, and on the statutorily mandated review required by the Planning Board at site plan review, the Hearing Examiner finds that the proposed development meets the purposes and requirements of the applicable zones, to the extent they can be evaluated at this stage of the proceedings, and that the proposed development’s binding elements will permit the Planning Board to approve a design at site plan review which will meet all applicable standards.

B. Compatibility

Compatibility issues were discussed at length in Part III.E. of this report (pp. 33 - 53). Based on the record discussed there and on the above analysis of the applicable purpose clauses, the Hearing Examiner finds that the proposed use would be compatible with the surrounding area, and that the SDPA, as currently proposed, is appropriate at his stage of review, and capable, under its binding elements, of producing a project compatible with its surrounding development and consistent with applicable historic preservation law. As already mentioned, the Planning Board will also evaluate compatibility at the site plan stage, and the Hearing Examiner recommends that the

Council's resolution require the Planning Board to submit this matter to the Historic Preservation Commission (HPC) for a determination of its jurisdiction and for HPC review of the development, if it finds it appropriate to do so.

C. Public Interest

Maryland law requires that zoning powers be exercised in the public interest. As stated in the State Zoning Enabling Act applicable to Montgomery County, all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110*].

Factors which are usually considered in determining the public interest include Master Plan conformity, the recommendations of the Planning Board and its staff and possible adverse effects on the surrounding area, public facilities and the environment.

1. Master Plan Conformity, Technical Staff and the Planning Board:

Technical Staff and the Planning Board found that the proposed development, as limited by the binding elements, is appropriate and consistent with the Master Plan. Exhibits 38, 42, 64 and 86. For the reasons discussed in Part III. E. of this report, the Hearing Examiner also finds that the proposed SDPA is consistent with the Sandy Spring /Ashton Master Plan, approved and adopted in 1998. Nevertheless, as mentioned above, the Hearing Examiner recommends that the Council condition its approval upon a referral of the matter to the HPC in connection with site plan review.

2. Public Facilities and the Environment:

The Transportation Planning staff reviewed the SDPA and found that it meets all requirements of Local Area Transportation Review and Policy Area Mobility Review, as discussed

in Part III. D. 3. c. of this report (pp. 25-30). As mentioned earlier, the record also supports the conclusion that other public facilities will not be adversely affected by the proposed use.

Environmental issues were discussed in Part III. D. 4 of this report (pp. 31-33). As mentioned there, a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) has been approved for the subject property (Exhibit 38, p. 25), and Environmental Planning Staff found that the revised Preliminary Forest Conservation Plan (Exhibit 36(e)) complies with Section 22A of the Montgomery County Code and the M-NCPPC Environmental Guidelines. It recommended conditional approval. Exhibit 38, p. 25.

The stormwater management facility is proposed for an area on the west end of the site at the recommendation by Technical Staff to avoid impingement on the historic district. Unfortunately, that placement will result in the removal of a significant portion of the existing forest, which the community argues is contrary to the recommendations of the Master Plan. Although the Department of Permitting Services has approved the stormwater management concept plan (Exhibit 69), the Planning Board should consider whether any other location for the stormwater management facility can be found to avoid the need for removing so much forest.

While a portion of the forest may be removed along the western part of the site, a 25 foot wide tree buffer will remain, and other landscaping will be added by the Applicant to provide screening for the western neighbors. Moreover, Applicant will be required to plant 1.27 acres of forest off site. Thus, the evidence indicates that the proposed SDPA will not likely have an adverse impact on public facilities or the environment. Technical Staff concluded that “[t]he amended Schematic development plan would prevent soil erosion and would preserve the natural features of the site.” Exhibit 38, p. 19.

In sum, given the record in this case and the strict requirements specified in the SSRVO Zone for site plan review, the Hearing Examiner finds that the proposed use will not adversely affect

surrounding development, will be consistent with the goals of the Master Plan, will provide a useful service to the community and will not adversely affect public facilities or the environment. The Hearing Examiner therefore concludes that its approval would be in the public interest and appropriate for the comprehensive and systematic development of the County.

VI. CONCLUSIONS

Technical Staff concludes its report with the following statement (Exhibit 38, p. 26):

The proposed development is generally consistent with all applicable standards of the C-T Zone and applicable requirements of the Zoning Ordinance. Moreover, the request is in accord with the land use recommendations of 1998 Sandy Spring/Ashton Master Plan and bears sufficient relationship to the public interest to justify approval. The concern raised regarding the parking element of the schematic proposed plan is such that can be addressed at Site Plan review process, where the plan will be presented with more developed and refined design, architecture, and landscaping details.

Based on the foregoing analysis and after a thorough review of the entire record, the Hearing Examiner reaches the following conclusions with respect to DPA 08-2:

1. That the requested SDPA complies with the purpose clauses of the O-M and SSRVO Zones and the development standards of the O-M, C-T and SSRVO Zones;
2. That the requested SDPA will be compatible with existing and planned land uses in the surrounding area; and
3. That the requested SDPA bears sufficient relationship to the public interest to justify its approval.

VII. RECOMMENDATION

I, therefore, recommend that DPA 08-2, seeking to amend the Schematic Development Plan and Covenants approved by Council Resolution No. 11-1397 on April 25, 1989 in LMA G-627 for 14.84 acres (210,993 square feet) of land located at 900 Olney Sandy Spring Road (MD 108), Sandy Spring, Maryland, **be approved** subject to the specifications and requirements of the Schematic Development Plan Amendment, Exhibit 94; provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Schematic

Development Plan Amendment within 10 days of approval, in accordance with § 59-D-1.64 of the Zoning Ordinance; that the Declaration of Covenants (Exhibit 93) is filed in the County land records in accordance with § 59-H-2.54 of the Zoning Ordinance; and that the Planning Board refers this matter to the Historic Preservation Commission (HPC) in conjunction with Subdivision and Site Plan review, so that the HPC may determine its jurisdiction and review this proposal, as appropriate.

Dated: January 30, 2009

Respectfully submitted,

Martin L. Grossman
Hearing Examiner